File No. 273/28

19

Collection No.

Office of the Resident
in Mysore,
Bangalore.

CR
19/6/4/1.9/6.
Mas

Pros. / Serial Nos. 23-62-68

(P-11E)

Subject.

Income Tax

References to High Courts

Previous References.	Later References.

S. 97.

MGIPC—FP—52DCFMis.—(1783)—27-5-25—39 000.

S.N.34 Letter No.5599/Ap.191/28-29, dated the 17th April 1929, from the Commissioner of Income-tax, Burma.

S.N.35. Letter No.5613 Ap.313/28-29, from the Commissioner of Income-tax, Burma, dated the 17th April, 1929.

---

(1) Draft submitted.

M Ramachandrasa 1.5.29 18/5/29

S.N.36. Issued Number 4278 dt 13/5/29

S.N.37. Letter Number 6566/ Ap:272-27-28 dated 6 April 1929 from the Commissioner of Income-Tax, Burma, Rangoon.

(2) Draft submitted.

M Ramachandrasa 17.5.29 18/17/5/29

S.N.38 Issued Number4606 dated 27th May 1929.

S.N.39 Letter No. R-14-(i)-14/29, dated the 4th June 1929 from the Commissioner of Income-Tax, Punjab, N.W.F. and Delhi Provinces.

S.N.40 Letter No. R-14-(i)-18/29, dated the 5th June 1929 from th Commissioner of Income-Tax, Punjab, N.W.F. and Delhi Provin

(3) Draft submitted.

M Ramachandrasa 15.6.29. 18/17/6

S.N.41. Issued No.3363, dated the 22nd June, 1929

S.N.46. Letter No.R-14(i)-18/29, dated the 1st July, 1929, from the Commissioner of Income Tax, Punjab, N.W.F. & Delhi Provinces, Lahore.

S.No.47. Letter No.9242/Ap:50/28-29, dated the 28th June, 1929 from the Commissioner of Income-tax, Burma.

F.U.C.I & II.

(Income-tax Clerk to see before issue.) (4)

Draft submitted.

× Seen. KSN 18-7-29

(From para 6)

A Subbaraya 18/7/29

S.N.48. Issued No.6236, dated the 22nd July, 1929.

S.N. 49 (Pue I) Letter No.9446/Ap.45/27-28, dated the 9th July, 1929, from the Commissioner of Income-tax, Burma.

S.N. 50. (Pue II) Letter No.R.-14-(i), dated the 12th July, 1929, from the Commissioner of Income-tax, Punjab, N.W.F. and Delhi Provinces and Lahore.

F.U.C.I & II

(5)

(To be shown to Income-tax Clerk before issue.).

Usual draft submitted.

(From para 5)

Seen. KN 26.7.29

A. Subbaraya 25/7/29

S.N.51. Issued No.6523, dated the 30th July, 1929.

S.N.52 . | From the Commissioner of Income-tax,Punjab,N.W.F.P.et
No.R14(i)/29,dated the 10thAug.1929

6

Draft submitted.(For precedent,Vide S.N.51)

R.V.Ramanathan
26.8.29

S.n.53 | Issued No.7335, dated the 27th August,1929

S.N. 54 | From the Commissioner of Income-tax, Burma,
No.11467, dated the 28th August,1929.

7

Draft submitted (For precedent, Vide S.N.XXX 51)

R.V.Ramanathan
5.9.29

S.n.55 | Issued No.7714, dated the 10th Sept.,1929

S.N.56 | From the Commissioner of Income-tax,Burma, No.11698,
dated the 4th September,1929

8

Usual draft submitted.

R.V.Ramanathan.
12.9.29

S.N.57 | Issued No.7917, dated the 17th September,1929.

S.N.58 | From the Commissioner of Income-tax, Burma, No.12258, d/ 14-9-29

S.N. 59 | No. 120471, d/ 13-9-29

6

Usual draft submitted (For precedent , vide S.N. 53 and 57)

C.V.Ramanathan 24.9.29

S.N.60 | Issued No.8234, dated the27th September, 1929.

S.N. 61 | From the Commr. of Income-tax, Burma, No. 16655, dated 12-12-29

10

Usual draft submitted.

C.V.Ramanathan 20.12.29

S.N. .62 | Issued No. 12031, dated the 25th Dec. 1929.

S.N. 63 | From the Commr. of Income-tax, ~~XXXXXX~~ thePunjab, No.R 14-(1)-21/29-30,d/ 9-1-30

11

Draft submitted.

C.V.Ramanathan 22.1.30

S.N. 64 | Issued No. 820, dated the 28th Jan. 1930.

S.N. 65 | From the Commr. of Income-tax, Burma,
No.459, dated 13-1-30

12

Usual draft submitted

C.V. Ramanathan
25.1.30

S.N. 66 | Issued No.1000, dated the 1st Feb. 1930

S.N. 67 | From the Commr. of Income-tax, Burma, No. 1011/1024
dated the 4th Feb. 1930

13

Draft submitted.

C.V. Ramanathan
25.2.30

S.N.68 | Issued No.1882, dated the 28th February, 1930.

BURMA.

No. 1111 /Ap:76
28-29

From

J.F. Sheehy, Esq., B.A., I.C.S.,

Commissioner of Income-tax, Burma,

Rangoon.

To

The Commissioner of Income-tax,

BANGALORE.

Dated Rangoon, the 16/12 January 1929.

Subject:- Income-tax Act, Indian (XI-1922), Section 66 (2) - Reference to the High Court - R.M.P. Chettyar Firm of Gyobingauk for the year 1927-28.

Sir,

I have the honour to forward herewith a copy of the judgment on the reference in the above case

I have the honour to be,

Sir,

Your most obedient servant,

for Commissioner of Income-tax, Burma.

LKR 14/1.

[R. O, 106 (a)].

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 31-1-1928

No. 1093 ENCLOS. 1

A copy of the marginally* noted ~~letter, with enclosure,~~ papers is forwarded to the Commr. of Anch. Commr. of Income-tax, Coorg, Bangalore, for information & favour of return

~~No. dated~~
Judgment of the Rangoon High Court in Civil Reference No. 10 of 1928.
~~from the~~

Secretary to the Resident.

532—15-9-1927—5,000—RPB.

C V Ramana Rao
29.1.28

2/-

REGISTERED OFFICE
Register No. 1045
Date of Receipt 29/1/29
File No. 273/29

Circular No. 1 of 1929.

R. Dis. No. 523-I.T/28.

CENTRAL BOARD OF REVENUE.

New Delhi, the 18th January 1929.

C I R C U L A R.

Reference to High Court, Madras - Indian Income-tax Act, XI of 1922 - Sections 10 (2) (vi) (Proviso) -26- Allowances in assessing business income - Depreciation allowance- Succession to business - Carry forward - Claim to - Massey & Co. Ltd. (Messrs), Madras.

The Madras High Court in Commissioner of Income-tax, Madras, **versus** Messrs. Massey & Co. Ltd., Madras, have recently decided that when a person succeeds to a business, he is entitled to carry forward for the purpose of assessment the unexhausted depreciation allowance in respect of buildings, machinery, plant, etc., due to his predecessor in the years previous to the succession. The depreciation allowance due to the successor on account of the buildings, machinery, etc., taken over by him should therefore be worked out on the basis of the original cost to the predecessor and not on the value at which the building, machinery, etc., are taken over by him. Commissioners of Income-tax should follow this decision in future cases of this nature. The instructions in paragraph 43 of the Income-tax Manual will be amended in due course. But cases already dealt with in accordance with the present instructions in the Income-tax Manual should not be re-opened.

Secretary, Central Board of Revenue

To

All Commissioners of Income-tax.

No. 1380, 9-2-29.
Copy forwarded to the Coll^r & Asst. Comm^r of Income-tax, Civil Lines, Bangalore

for Sec. to the Revd. Comm^r of I.T.

R. V. Ramanathan 5.2.29.

No. IT.Mis/29/Judg/Lur

Office of the
Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore,

Dated the 4th February *1929*.

From
G. H. Cooke, Esq., M.C., I.C.S.,
Collector and Asst. Commr. of Income-Tax,
Civil and Military Station,
Bangalore.

To,

The Secretary to the Resident
and Commissioner of Income-tax
Civil & Military Station, Bangalore.

9/2/29
1338
6/2/29
223/28

Subject.—

Sir,

I have the honour to return herewith the judgment of the Rangoon High Court in Civil Reference No.10 of 1928 forwarded with your No.1093/273-1928 dated the 31st January 1929.

I have the honour to be,
Sir,
Your most obedient servant,

Asst. Commr. of Incometax.

DESPATCHED
5 FEB 1929

May be filed

9.2.29

IN THE HIGH COURT OF JUDICATURE AT RANGOON.

Civil Reference No. 10 of 1928.

The Commissioner of Income-tax, Burma .....Appellant.

Versus

R.M.P. Chettyar Firm. .....Respondent.

Reference made by the Commissioner of Income Tax - Burma under section 66 (2) of the Indian Income Tax Act 1922.

For Appellant Government Advocate.
For Respondent Mr. Foucar.

JUDGMENT.

Dated the 3rd day of January 1929.

This is a reference made by the Commissioner of Income Tax under section 66 of the Indian Income Tax Act (XI of 1922), the question referred being :-

"After an assessee has made a return of his income under "Section 22 (2), can the assessment be made under section 23 (4) "of the Act for non-compliance with the terms of a notice "under section 22 (4) ?"

The essential question raised in the argument before us is whether a notice under section 22 (4) may or may not be issued by the Income Tax authorities after the assessee has made a return of his income as required by a notice under section 22 (2).

The assessee's contention that a notice under section 22 (4) can be issued only before a return has been made receives some support from the case of Brij Raj Ranglal vs. Commissioner of Income Tax (1) and that of Khushi Ram Karam Chand vs. Commissioner of Income Tax (2). Neither of which appear in the authorised reports. But the first of these decisions has been expressly overruled by a full bench of five judges of the same court - the High Court of Patna - in Ram Khe lawan Ugam Lal vs. Commissioner of Income Tax (3), and the same view was taken by the two other judges of the Court who referred the question to the full bench. Thus seven judges

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(1) All India Reporter (1927), Patna, 390, (2) All India Reporter (1928), Lahore, 219.
3. I.L.R., 7. Patna, 852.
4. XXXII Calcutta Weekly Notes, 710.
5. I.L.R. 50 Allahabad, 589.

of that Court are of opinion that the decision in Brij Raj's case was wrong.

The same question has been considered by the High Court of Calcutta in In the matter of Messrs. Harmukhrai Dulichand (4), and by the High Court of Allahabad in In the matter of Chandra Sen Jaini (5) and both of these Courts are in agreement with the decision in Ram Khelawan's case. That being so the weight of authority is very strongly against the contention advanced by the assessee. The question has been very fully discussed in the judgments quoted and we agree with the arguments there set out and with the decision arrived at. We consider it unnecessary, therefore, to enter into further discussion of the question.

We answer the question referred in the affirmative.

The assessee must pay the costs of this reference - Advocate's fee 5 Gold Mohurs.

Sd/ Guy Rutledge, Chief Justice. Sd/ H.A.Brown Judge. Sd/ W. Carr Judge.

True copy
Clerk 15.1.29.
Office of the Commissioner of Income-tax, Burma.

NKR 14/1.

26

BURMA.

Registry No. 2846
Date of Receipt 18/3/29
File No. 379/29

No. 3799/A&C 42
28-29

From

J. F. SHEEHY, ESQ., I.C.S.,

Commissioner of Income-tax, Burma.

To

Draft submitted.

The Commissioner of Income-tax,

Bangalore.

Dated Rangoon, the 7th March 1929.

Sir,

Subject:- Income-Tax Act, Indian (XI - 1922) - Section 66 (3) - Application of L. R. M. S. T. Chettyar Firm, Nyaunglebin, Pegu District, Burma, in connection with its assessment for the year 1924-25.

*****

I have the honour to forward herewith for your information a copy of the judgment in the case mentioned above.

I have the honour to be,

Sir,

Your most obedient servant,

P. A.,
for Commissioner of Income-tax, Burma.

VR/6.3.

Forwarded with compliments to the Commissioner of Income-tax, Cott Station, Bangalore. As the same has been wrongly delivered at this office.

Bangalore
15th March '29

for Commissioner of Income Tax
in Burma

No. R.N.C. 9
27-28

From,

Khan Bahadur, Wali Mohammad, B. A.,

Commissioner of Income-tax,

Central Provinces and Berar.

To.

The Commissioner of Income-tax,

in Mysore, Bangalore

Dated Nagpur the 7th March 1929.

Sir,

Application under section 66(3) to High Court- Nagpur - Questions of law not involved- Section 28- Penalty for concealment of income-

Ramkrishna Asanna of Warora (District Chanda)

I have the honour to forward herewith a copy of the order passed by the Nagpur High Court in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

Superintendent,

for Commissioner of Income-tax,

Central Provinces and Berar.

Memo

Forwarded with compliments to the Commissioner of Income-tax, Cott Station, Bangalore, as the same has been wrongly addressed to this office.

Bangalore
15th March 29

for Commissioner of Income Tax
Mysore

[R. O. 106 (a)].

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 22-3-192 9

No. 270 ENCLOS. 2-

~~A copy of~~ The marginally* noted papers are forwarded

(1) Judgment in C. M. A. No. 167 of 1928 in the Rangoon High Court ~~from the~~ dated

(2) Order in Misc. Judicial Case 40 of 1928 in the Court Of the Judicial Commissioner, Central Provinces.

to the Collector and Assistant Commissioner of Income-tax, C &M Station, Bangalore, for information and favour of return.

Encl. 6 pages

Secretary to the Resident.

532—15-9-1927—5,000—RPB.

C V Ramanathan
20-3-29

RESIDENT'S OFFICE
25
Register No. 2962
Date of Receipt 20/3/29
File No. 235/09

No. R. H.C.-11
26-27

From,

Khan Bahadur Wali Mohammad, B. A.,

Commissioner of Income-tax,

Central Provinces and Berar.

To

The Commissioner of Income-tax,

in Mysore Bangalore

Dated Nagpur the 5th March 1929.

Sir,

Reference to High Court- Nagpur- Indian I.Tax Act (XI of 1922)- Section 66(3)- Questions of law different from those given in application under section 66(2)-

Section 13- Income, profits and gains- Commutation of- Opening stock (closing stock of the previous year)- Verification of-

Raghunathdas Rampratap- Omnor Radhakishan Laxminarayan of Akola.

My letter R. H. C. No. 11/26-27 dated the 10-2-28.

Forward 4-4-29

I forward herewith a copy of the order passed by the Nagpur High Court in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

Usual Draft submitted.

N Krishnamachari 25.3.29

Superintendent.

for Commissioner of Income-tax,

Central Provinces and Berar.

[R. O. 106 (a)].

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 2nd April 192 9

No. 2985 ENCLOS. 1

Encl. to p. w. r.

~~A copy of~~ The marginally* noted paper ~~letter, with enclosure~~ is forwarded

~~*No.~~ ~~dated~~ ~~from the~~ } to the Collector and Assistant Commr. of Income-tax, C & M Station, Bangalore for information and favour of return.

Order in MIS: JUDICIAL CASE No. 39B of 1928 in the court of the Judicial Commr., Central Provinces.

for Secretary to the Resident.

532—15-9-1927—5,000—RPB.

C. V. Ramana Rao
25.3.29

BURMA.

No. 4369/Ap:36466
28-2

From J.F. SHEEHY, ESQ. I.C.S

Commissioner of Income-tax, Burma,

Rangoon.

To

The Commissioner of Income-tax,

Bangalore.

Rangoon, the 21st March 1929.

Subject:- Income-tax Act, Indian (XI-22) Sections 66 (3) / 66 (2) - Applications of Chan Low Chwan / Tong Hock Hin for a reference to the High Court.-

Sir,

In continuation of this office letters Nos.

18859 / 18862 Ap:36 dated the 10th November 1928

18867 / 18880 Ap:66 dated the 10th November 1928

I have the honour to forward herewith for your information a copy of the judgments in the cases mentioned above.

I have the honour to be,

Sir,

Your most obedient servant

21/3/29 P.A.
for Commissioner of Income-tax, Burma.

Office of the Commissioner of Incometax
in Mysore, Bangalore, 1st April 1929.

Forwarded, with compliments, to the Commissioner of Incometax, Civil & Military Station, Bangalore, as this has been mis-sent to this office.

For Commissioner of Incometax
in Mysore.

NKR 19/3.

32

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 12-4-1929

No. 3226 ENCLOS. 2

~~A copy of~~ the marginally* noted ~~letter~~, papers are ~~with enclosure,~~ is forwarded to the Coll^r & Asst Comm^r of Income tax, Ctn & Bangalore for information and favour of return

*Judgment of the Rangoon High Court in C.R. No 11 of 1928 and Civ. A. No 13 of 1928 dated from the

O/C

W Ramachandra Rao

Secretary to the Resident.

358, R.O. 26—17-11-1926—2,000—RPB

5/4/29

33

No. R.S/no/2220/Ex

Office of the
Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore,

Dated the 12th April 1929

From
G. H. Cooke, Esq., M.C., I.C.S.,
Collector and Asst. Commr. of Income-Tax,
Civil and Military Station,
Bangalore.

To

The Secretary to the Resident
and Commissioner of Income-tax,
Civil & Military Station, Bangalore.

RESIDENT'S OFFICE,
Regn. No. 3831
Date of receipt 15/4/29
File No. 27/28

Subject.—

Sir,

I have the honour to return herewith copy of Judgments forwarded with your endorsement Nos. 2770 and 2985 dated 22nd March 1929 and 2nd April 1929 respectively.

1) Judgment in C.M.A.No.167 of 1928 in the Rangoon High Court.

2) Order in Misc.Judicial Case 40 of 1928 in the Court of Judicial Commissioner, Central Provinces.

3) Order in Misc. Judicial Case 39B of 1928 in the Court of the Judicial Commissioner, Central Provinces.

I have the honour to be,

Sir,

Your most obedient servant,

D.Y. 12/4.

for Collector and Assistant Commr. of Income-tax.
12/4/29.

KMP.

RECEIVED
12 APL 1929

May be filed
M Ramachandra
24/4/29

24/4/29

IN THE HIGH COURT OF JUDICATURE AT RANGOON.

Dated Rangoon the 25th day of February 1929.

Civil Miscellaneous Appln: No.167 of 1928.

L.R.M.S.T. FIRM vs. THE COMMISSIONER OF INCOME TAX, BURMA.

Application for a mandamus under Section 66 (3) of the INDIAN INCOME TAX ACT, 1922.

For Applicant Mr. Foucar.
For Respondent Mr. Gaunt.

JUDGMENT.

This is an application for a mandamus to be directed to the Commissioner of Income-tax ordering him to state a case in accordance with the provisions of section 66 (3) of the Indian Income-tax Act of 1922.

The short facts are that the Income-tax Officer of Pegu assessed the applicants for the year 1924-25 to income-tax on a sum of Rs.6,070/-, which had escaped assessment. The applicants are a Chettyar firm and for the year 1924-25, the interest on certain "investments" in the firm was allowed to be deducted from the firm's gross profits. This deduction was allowed upon the ground that the said sum was interest on certain stridhanam monies invested in the applicants' business by certain lady relatives of theirs in Madras. The Income-tax Officer had reason to believe that these monies were in fact surplus investments of the partners. He issued notice under sections 34 and 22 (2) of the Act to enhance the original assessment, and the assessment was enhanced. Upon appeal to the Assistant Commissioner, this officer held that the sum of Rs.6070/- was assessable to income-tax as part of the income of the applicants' firm and dismissed the appeal.

In support of their contention, the applicants filed affidavits of the ladies in question, and also relied on the fact that the said sum had been assessed for Income-tax in Madras as being the separate property of the ladies we have referred to.

It is said that a question of law arises in this case, but we are unable to agree that this is so. The only question is whether the amount under review in fact is interest on funds of the applicants' firm. If it is, it is liable to Income-tax in Burma. The fact that there has been an assessment by an Income-tax Officer elsewhere is no doubt a fact to be taken into consideration but it is not conclusive. It appears that the Madras assessment was made upon the statements of the ladies concerned and moreover we observe that the tax paid by the ladies has been allowed for (as an act of grace) in the assessment of the applicants' income. In any event, the fact that the Madras assessment was made would not in our opinion prevent an Income-tax Officer here, after proper enquiry, from coming to the conclusion that the sum assessed was in fact assessable in this Province. If that were not so, the door would be open to fraud on the part of persons who might get themselves assessed in one place upon one basis, whereas in truth and in fact the assessment should be made in another place upon an entirely different basis. We are not satisfied that any question of law arises and we dismiss the application with costs, advocate's fee to be three gold mohurs.

Sd/-B.H. HEALD.
Judge.

Sd/-R.E. OTTER
Judge.

NKR 6/3.

IN THE COURT OF THE JUDICIAL COMMISSIONER

Miscellaneous Judicial Case No. 40

Ramkrishna Asanna ... ...

The Commissioner of Income-tax

C. P. and Berar ... ... Non-applicant

Application for reference under section 66 (3) of the Income-tax Act.

28th January 1929.

Mr. D. T. Mangalmurti, Advocate for the applicant is heard.

ORDER.

The applicant applies under section 66(3) Income-tax Act, as upon an application made under section 66(2) of the Act the Commissioner of Income-tax has refused to state a case. It may be noted that the grounds put forward in this application relate only to the order passed under section 28 of the Act, and no objection appears to have been made with regard to the assessment. In the application to the Commissioner under section 66(2) five grounds were given: the first two relate to the inference that the applicant had concealed his income, the next two relating to the penalty inflicted under section 28 of the Act, and the last being a general complaint about the procedure adopted. In the present application the first three grounds relate to the action taken under section 28 whilst the last ground is a general and argumentative one to the effect that mere omission to state particulars of income does not amount to a concealment.

The facts of the case have been set forth clearly in the Commissioner's order and I am satisfied that the Commissioner's decision is correct and that there is no sufficient reason to require him to state a case and to make it. It is not denied that the

separate shop at Wun or that there were large profits made at that shop. It is also not denied thatthe applicant ~~xxx~~ did not include the income of the Wun shop in the returns made by him. His explanation that he expected to be separately assessed for the Wun shop at Yeotmal shop cannot be accepted, and the only reasonable inference is that the applicant did conceal his income. The Income-tax Department were, therefore, justified in taking action under section 28 of the Income-tax Act, and it has been found by the Commissioner in his order that the procedure followed was correct and the Income-tax Officer had called upon the applicant to show cause why the~~y~~ penalty should not be inflicted. I am satisfied therefore of the correctness of the Commissioner's order and see no reason for calling upon the Commissioner to state a case. The application is therefore dismissed without notice to the Commissioner.

Sd/- F. H. Staples,
Additional Judicial Commissioner
26th February 1928

True Copy.

Superintendent,
Office of Commissioner
of Income-tax, C. P. and Berar.

Copy of order dated the 15th February 1929 by Bench in Mis: Judicial Case No. 39-B of 1928 in the Court of the Judicial Commissioner, C. P. Berar Jurisdiction.

The Commissioner of Income-tax C. P. and Berar.....Applicant.

Radhakisan Ramnarain, Akola..... Non.applicant.

ORDER.

The Commissioner of Income-tax has stated this case according to the order of Khkhede, Additional Judicial Commissioner, passed in Miscellaneous Judicial Case No, 8-L of 1927 on the 25th June 1928. The facts have been stated at some length in the reference and need only be briefly repeated. There is a firm at Akola styled "Raghunath -das Rampratap" of which the owner is Radhakisan Laxminarayan. That firm keeps accounts from Diwali to Diwali and submits returns accordingly for the purpose of income-tax. For the year ending in Diwali 1924 the return shown was:-

Income	....	Rs. 10,473-12-6.
Loss	....	" 5,034-13-9
Total income		Rs. 5,438-14-9

The Income-tax Officer not accepting this return called for accounts and submitted a report to the Assistant Commissioner, who after hearing Radhakisan and examing the accounts, assessed the income at Rs. 44,847-6-0. Radhakisan made an appeal to the Commissioner of Income-tax and some reduction was made by the Commissioner, but otherwise the assessment was upheld. The assessee then applied for a reference under section 66(2) of the Income-tax Act to the High Court, but his prayer was rejected by the Commissioner on the ground that no question of law arose out of the facts of the case. On an application then being made to this court, Khkhede, Additional Judicial Commissioner, held that the case involved questions of law and directed the Commissioner of Income-tax to state the case and make a reference.

The only point really in dispute now is whether the item of Rs. 24,528-1-9 shown as loss in the cotton business for the year under ~~Assessment~~ assessment is wrongly disallowed by the Assistant Commissioner ~~in~~ on

and by the Commissioner in the appeal. The matter has been stated at some length in the order of the Assistant Commissioner, dated the 17th December 1925, making the assessment, a copy of which is now on the record as Exhibit A. The point seems to be that in the previous year cotton business was carried on in the name of Dongulal Ghisulal. When the books ~~xxxx~~ of the firm were called for, Radhakisan produced books of the firm of Raghunathdas Rampratap, but did not produce the books of Dongulal Ghisulal. He stated that he could not find those books and appears to maintain in his appeal and in his application to this court that the accounts of Dongulal Ghisulal were incorporated in the books of the main firm Raghunathdas Rampratap. The Assistant Commissioner However, held that he could not accept the loss of Rs. 24,528-1-9 because the closing stock and the sale proceeds of the preceeding year were not shown. In the appeal the Commissioner also held, that as the accounts of the business in question, i.e. of Dongulal Ghisulal, were not produced, it could not be know whether there was any opening stock from the preceding year or not. The Commissioner therefore held that the appellant failed to prove that he sustained this loss, and did not allow it.

In his order of reference the Commissioner has pointed out that the ground given in the application to the High Court under section 66(3) of the Act were distinct from the grounds given in the application to the Commissioner under section 66(2), and contends that no reference upon a question of law not raised by the applicant before the Commissioner can be obtained, referring in this connection to the case decided by this court in the Commissioner of Income-tax, Nagpur, V. Jainarayan Lotiram of Shegaon (1), on the 30th June 1928, and to the case decided by the Madras High Court

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(1) M.J.C. No. 20-B of 1927.

in the matter of the Income-tax assessment of P. Thiruvengada Mudaliar - Assessee (1), decided on the 14th December 1927, and also to the decision of the Allahabad High Court in the matter of Lall Lal Hardeodas Cotton Spinning Mills (reports of Income-tax cases, Vol. 1, page 266) and in the matter of Lakham Lal Ram Serup (page 416 of Vol. 1 of the same reports). The question whether an assessee can obtain an order of reference from the High Court upon a point of law not raised in his application to the Commissioner under section 66(2) of the Act need not, we think, be gone into in disposing of the present reference, because, although the grounds given in the application to the High Court were different in form from the grounds given in the former application to the Commissioner, the real point at issue is the same, viz. whether the Assistant Commissioner was right in disallowing the losses amounting to Rs. 24,528-1-9 alleged by the applicant during the year under assessment. The question of the interpretation of the Assistant Commissioner's order does not, in our opinion, arise, because the Assistant Commissioner's order is really clear and, in any case, the order of the Commissioner when deciding the appeal is as clear as possible and can leave no room for doubt that the losses were not allowed because they were held to be not proved, and not on account of any imaginary profits or gains which were supposed to have occurred during the year ~~year~~ under assessment or the previous year.

The facts of the case are simple as stated above and in our opinion, the only point of law involved is the question on whom the burden of proof lies to prove losses alleged to have been sustained: on the party alleging the losses or on the Income-tax Department.

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(1) (1928) A.I.R., Madras, 889.

Department. The Assistant Commissioner and the Commissioner contend that the burden of proving losses is upon the assessee, who alleges them; whilst the argument put forward by the applicant is that proving losses is proving a negative, and that therefore, on the principle of the ruling in Bishnu Priya Chowdhurani, In re (1), the burden of proving the negative should not have been cast upon the applicant. This contention is, in our opinion, quite incorrect. There is a considerable difference between proving a negative, i.e. proving that there is no income during a year, and proving that there were; as a matter of fact, actual losses incurred. The applicant in the present case has not denied that there was income during the year under assessment. He has admitted income, but has pleaded that the expenditure exceeded the income and that a loss was sustained. He however, only statedthe figures of purchases and sales, and when asked to give the opening balance, which was surely necessary so as to dertermine thenet income for the year, he has failed to do so. We consider that, whem once income has been admitted, the burden of proving losses is upon the assessee who alleges them, and the losses cannot be said to be satisfactorily proved unless all the particulars with regard to them are clearly shown and a very important particular with regard to such losses must always be the opening balance at the beginning of the financial year in which the losses are said to have occurred.

Under section 24(1) of the Income-tax Act an assessee is entitled to have his losses set off against his income in any year, but he surely cannot claim that right unless he proves the losses; and the losses cannot, we think, be heldto be satisfactorily proved

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(1) ( ) I.L.R. 50 Cal. 907

proved by merely showing the figures for purchases and sales during the year without showing the opening balance in hand at the beginning of the year. Nor are we pressed by the argument that in the present case there is really an assessment for additional income during the preceding year, which view seems to have been taken by Minkhede Additional Judicial Commissioner, in his order directing the Commissioner to state the case. The income for the preceding year was assessed under section 23(4) of the Act as the assessee did not produce his books or accounts. In the year now under review books were produced, but it has been held that those books, although they have been accepted as far as they go, are not sufficient to prove the losses alleged to have been sustained because the opening balance has not been shown. There is no attempt now made by the Income-tax Department to increase to assessment for the preceding year, nor has any action been taken under section 34 of the Act with regard to the previous year. All that is now held by the Income-tax Department is that during the year under assessment the applicant has really enjoyed income considerably more than the income shown, because the losses which he has alleged in his cotton business have not been proved.

The actual terms of the reference are:-

(1) as the Commissioner of Income-tax right in ~~xxxx~~ interpreting the Assistant Commissioner's order to mean that the loss was not proved notwithstanding the facts disclosed by the Assistant Commissioner's orders dated 17-12-1925?

(2) Was the Commissioner of Income-tax right in interpreting the Assistant Commissioner's order to mean that no imaginary profits from a supposed stock were added in order to set off the loss of Rs. 24,528 sustained by the assessee?

(3) If not, was not the addition unjustified and bad in law as based on mere suspicion or irregular

irregular and hearsay information and in the case of the assessee's statement denying the new and imaginary source of income?

With regard to the first, we are of opinion that the Commissioner of Income-tax was right in his interpretation of the Assistant Commissioner's order. In paragraph 2 of his order, a copy of which is filed as Exhibit B, the Commissioner has quoted a passage from the order of the Assistant Commissioner and has then pointed out that there was some slight confusion in the latter order. The Commissioner has then gone on to show how the assessment in the preceding year was made under section 23(4) as accounts were not shown, and in the year under assessment, as the opening stock had not been shown, the Assistant Commissioner refused to admit the loss of Rs. 24,626/- The Commissioner has further explained that the addition of this loss to the income return is not really an assessment of additonal income but is only a refusal to accept losses, which were alleged, but not proved. We cannot see that there is anything wrong or illegal in the Commissioner's interpretation of the Assistant Commissioner's order or in his findings.

As regards the second question, which is largely a repetition of the first, we would again hold that no imaginary profits from a supposed stock have been added either by the Assistant Commissioner's order or by the Commissioner's interpretation thereof. All that has been held in both orders is that, as the opening stock was not shown, the losses which have been alleged as a result of the sales and purchases for the year under assessment could not be allowed. No imaginary profits or additional income have been assessed.

The figures as given by the assessee have been accepted with the exception that the losses shown have been disallowed as not proved.

From these findings, it follows that the addition was not unjustified or bad in law. It was not really an addition of income, but only a refusal to allow the alleged losses. Nor has

has it been shown that these losses have been disallowed on account of any hearsay information, and there is no question of any new or imaginary source of income. All that has been held is that in the ordinary cotton business, which was admittedly carried on by the assessee, the losses shown have not been proved, because the opening balance at the beginning of the year was not shown and only sales and purchases during the year were shown.

We are of opinion, then, that the case now stated for decision should be answered as indicated above and that there are no legal grounds for interfering with or reducing the assessment as made by the Commissioner of Income-tax. Costs of this application will be borne by the applicant. We fix pleader's fees at Rs. 200/-.

Sd/- G. Mohiuddin,

Sd/- F. H. Staples,

Additional Judicial Commissioners,

15th February 1929.

11.3.29

B U R M A.

No. 5468/Ad.149/28-29

From

J. F. SHEEHY, ESQ., I.C.S.,

Commissioner of Income-tax, Burma,

To

THE COMMISSIONER OF INCOME-TAX,
BANGALORE.

BANGALORE
Register No. 3911
Date of Receipt 18/4/29
File No. 278/29

Dated Rangoon, the 6th April, 1929

SUBJECT:- Income-tax Act, Indian (XI of 1922) Section 66(3) - Reference to the High Court - Application of the P.K.M. Chettyar Firm, Rangoon, in connection with its assessment for 1925-26.

* * *

Sir,

S.IV.15 (N)

In continuation of my letter No. 18297/Ad.149/27-28, dated the 1st November 1928, on the subject cited above, I have the honour to forward herewith a copy of the Order of the High Court, dated the 3rd January 1929, on the first reference and of the further reference made in accordance with that order.

I have the honour to be,

Sir,

Your most obedient servant.

6/4/29

P.A.,
for Commissioner of Income-tax, Burma.

6.4.29

TKR/6-4.

Usual draft - submitted
24/4/29

[R.O.106(a).]

35

OFFICE OF THE RESIDENT IN MYSORE

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

Bangalore, 30th April 1929.

No. 3877 Enclos. 2

A copy of the marginally* noted letter with enclosure is forwarded for papers are

*No. 5465, A/1149/28-29, dated the 6th April, 1929, from the Commissioner of Income-tax, Burma.

to the Collector and Assistant Commissioner of Income-tax, Civil and Military Station, Bangalore, for information and favour of return in continuation of this Residency endorsement No.10987, dated 29th November 1928.

Secretary to the Resident.

1212—16-3-1929—5,000—RPB.

M.R. Ramachandrayya
26.4.29

36

No. CR No/3226/29-30/Ey

Office of the
Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore,

Dated the 19th April *1929* .

From
G. H. Cooke, Esq., M.C., I.C.S.,
Collector and Asst. Commr. of Income-Tax,
Civil and Military Station,
Bangalore.

To

The Secretary to the Resident
and Commissioner of Income-tax,
Civil & Military Station, Bangalore.

RESIDENT'S OFFICE
No. 4215
Date of Receipt 26/4/29
File No. 273/29

Subject.—

Sir,

I have the honour to return herewith copy of the Judgments of the Rangoon High Court in C.R.No.11 of 1928 and C.M.A.No.13 of 1928, forwarded with your endorsement No.3226/273-1928 dated the 12th April 1929.

S-IV-32 (B)

I have the honour to be,
Sir,
Your most obedient servant,

for Collector & Assistant
Commr. of Income-tax.

DESPATCHED
25 APL. 1929

May be filed

27.4.29

IN THE HIGH COURT OF JUDICATURE AT RANGOON.

Dated Rangoon, the 18th day of February 1929.

Civil Reference No. 11 of 1928.

The Commissioner of Income-tax vs. Tong Hock Hin.

Reference made by the Commissioner of Income-Tax, Burma, under Section 66 (2) of the Indian Income Tax Act 1922.

For applicant — Government Advocate.

For respondent — Mr. Foucar.

JUDGMENT.

This case is very similar to the one just decided, (Civil Miscellaneous No.13 of 1928), the only difference being that the questions were referred to this Court by the Commissioner under section 66 (2) of the Act.

The questions referred are:

(1) Whether an assessment can in the circumstances of the case, that is, where the accounts are rejected as untrustworthy, be made on insufficient materials and whether it is incumbent on the assessing officer to set out the exact details of his computation ?

(2) Whether after the accounts had been rejected an assessee should not be given a chance after due notice to explain the accounts put forward.

The statements of accounts of the assessee for 1924-25, 1925-26 and 1926-27 were rejected on the grounds of being false and the same took place for the year 1927-28, which is the assessment now in question. The assessee had no less than six opportunities to explain his accounts or produce any evidence in support of the return, so that he has, if possible, less merits than the assessee in the previous case.

For the reasons there given, we consider that the Income-tax Officer was fully justified in making the assessment under section 13 of the Act. We agree with the answers given by the Commissioner of Income-tax in his statement of the case and we answer them accordingly. Respondent must pay the Commissioner's costs, 7 gold mohurs.

Sd/- W.Carr, Judge. Sd/ H.A. Brown, Judge. Sd/ Guy Rutledge, Chief Justice.

True copy.

Clerk

Office of the Commissioner of Income-tax, Burma.

NKR 18/3.

IN THE HIGH COURT OF JUDICATURE AT RANGOON.

Dated Rangoon the 18th day of February 1929.

Civil Miscellaneous Application No.13 of 1928.

THE COMMISSIONER OF INCOME-TAX Vs. CHAN LO CHWAN.

Application for a mandamus under section 66 (3) of the Indian Income Tax Act. 1922.

For Applicant - Government Advocate for the Commissioner.
For Respondent - Messrs. Cowasjee & Daniel for Assessee.

JUDGMENT.

In compliance with an order of this Bench in Civil Miscellaneous Case No.13 of 1928, the Commissioner of Income Tax, Burma, has stated a case on the following points of law:

Can an Income-tax Officer having rejected the accounts of an assessee as not being genuine, proceed to make an assessment (i) on insufficient material and (ii) without giving notice of his dissatisfaction to the assessee under section 23 (2) of the Act ?

In his statement of the case, the Commissioner reviews the circumstances attending the assessment of the present respondent since the year 1922-23. From this, it appears that the accounts at any rate since the year 1924-25 have been rejected as incomplete and fraudulent, and merely made up for income-tax purposes. The Commissioner sets out the grounds on which the Income Tax authorities were satisfied that the statement of accounts was incomplete and fraudulent and we consider that they had good grounds for forming such an opinion. Whether the statement is incomplete and fraudulent or not is a question of fact for the determination of the income-tax authorities and not a question on which this Beanch can interfere, and, indeed, from the wording of the reference, this seems to be taken for granted, as it assumes that the Income-tax Officer was within his rights in rejecting the accounts as not being genuine.

The first question then is: Can he proceed to make an assessment on insufficient material ? We think on this point the quotations which the Commissioner has made from the case of MacPherson & Company vs. Moore (1) are very much to the point. In that case, no doubt MacPherson & Company had failed to make any return, but we quite fail to see why a party who has made a false return should be in a better position than one who has failed to make any return. Mr. Cowasjee urges that section 13 only applies to the method and does not empower the Income-tax authority in any way. We cannot see any such limitation in the words of the proviso, which run as follows:-

"Provided that if no method of accounting has been regularly employed or if the method employed is such that in the opinion of the Income-tax Officer the income, profits and gains cannot properly be detected therefrom, then the computation shall be made on such basis and in such manner as the Income-tax Officer may determine."

In this case, the Income-tax Officer clearly considered that the income, profits and gains could not properly be detected from respondent's statement, since he decided that that statement was not genuine. He was consequently entitled to adopt whatever method he thought best. Adapting the words of the Lord President in Macpherson's case already alluded to "If Chan Lo Chwan does not choose to make an honest statement of account so that the amount of profits may be strictly determined, he cannot complain if a rendom assessment is made upon him by the Crown." For years, according to the Commissioner, the firm has made defective and dishonest returns for the purpose of income tax and it is to be hoped that it will at last dawn upon them that honesty is the best policy and that this Court will not aid them in reducing the administration of the Income-tax law to a nullity.

(1) 6 Tax Cases at pp.114 and 115.

The second question in the reference is: Can the Income-tax Officer make an assessment without giving notice of his dissatisfaction to the assessee under section 23 (2) of the Act ? On this point, the Commissioner states that two notices were issued under section 23 (2) and also an informal notice requiring the assessee's attendance. The assessee was examined on two occasions and his statements were recorded. He admits that the assessee was not questioned on the specific points which form the grounds for the officer rejecting the accounts. The controversy on this point seems to come to this: For the assessee it is urged that the Income-tax Officer should give him particulars in respect of the grounds on which he thinks that the statement was not genuine or on which it is incomplete. We may say that there is no such provision in the Act and that the Government Advocate's observation that it was a matter for the legislature rather than the Court seems to be justified. In an ordinary case, we have no hesitation in saying that such particulars ought to be given in a notice, especially in cases where the objection is that the accounts are incomplete. Here, however, where the finding is that the accounts of the assessee in previous years as well as in this year were not genuine but were merely cooked for Income-tax purposes, we do not consider that the Income-tax Officer was under any obligation either in law or in common fairness to set out all the reasons which led him to come to such a conclusion.

We accordingly agree with the answers given by the Commissioner in respect of both questions and we order the respondent to pay the Commissioner's costs, 7 gold mohurs.

Sd/ W. Carr	Sd/ H.A. Brown,	Sd/ Guy Rutledge,
Judge.	Judge.	Chief Justice.

True copy

Clerk 1/7/3

Office of the Commissioner of Income-tax, Burma.

NKR 18/3.

BURMA.

No. 5599 / Ap:191/28-29.

From

J.F. SHEEHY, Esq., C.I.E., I.C.S.,

Commissioner of Income-tax, Burma,

Rangoon.

To

The Commissioner of Income-tax,

Bangalore.

Rangoon, the 17th April 1929.

Subject:- Income-tax Act, Indian (XI of 1922) - Section 66 (2) - Reference to High Court - Application of Burma Corporn: Ltd., in connection with its 1928-29 assessment.

Sir,

I have the honour to forward a copy of the statement in the above case which has been sent up to the High Court of Judicature at Rangoon.

I have the honour to be,

Sir,

Your most obedient servant,

17.4.29

P.A.

for Commissioner of Income-tax, Burma.

16.4.29

NKR 10/4.

B U R M A.

No. 563/Ap. 313
28-29

352

4229

From

J. F. SHEEHY, ESQ., I.C.S.,

Commissioner of Income-tax, Burma,

To

THE COMMISSIONER OF INCOME-TAX,

BANGALORE.

Dated Rangoon, the 17th April, 1929.

Sir,

SUBJECT:- INCOME-TAX ACT, INDIAN (XI OF 1922) SECTION 66(2) - REFERENCE TO THE HIGH COURT - ASSESSMENT OF THE E. M. CHETTYAR CONCERN, MOULMEIN.

* * * *

I have the honour to forward a copy of the statement in the above case which has been sent up to the High Court of Judicature at Rangoon.

I have the honour to be,

Sir,

Your most obedient servant,

17.4.29

for Commissioner of Income-tax, Burma.

16.4.29

TKR/11-4.

36-C

No. 6278. Office of the Resident in Mysore,
273/1928 Secy 2 Bangalore, the 13th May 1929.

The marginally noted papers are forwarded to the Collector and Assistant Commissioner of Income-tax, Civil and Military Station, Bangalore, for information, and favour of return.

1. Statement of facts and of opinion by the Commissioner of Income-tax, Burma

S.N.34 (1) Income-tax - Act - Indian XI of 1922 - Section 66(2) - Reference to High Court. Application of the Burma Corporation, Ltd., in connection with its assessment for 1928-29.

S.N.35 (2) -do- Reference to High Court - Assessment of the E.M.Chettiar concern Moulmein.

Major.
for SECRETARY TO THE RESIDENT &
COMMISSIONER OF INCOME-TAX.

L.S.29

BURMA.

37

No. 6566/An:272
27-28.

From

J.F. [illegible], ESQ., I.C.S.,

Commissioner of Income-tax, Burma,

Rangoon.

RESIDENT'S O
[illegible]
Regd. No. 4914
Date of receipt 15/5/29
Dily No. 273
1928

To

The Commissioner of Income-tax,

Bangalore:

This may please
be the Mysore etm
Shanbhag. Please forward SB 14 2/1

Rangoon, the 6th April 1929.

Subject:- Income-tax Act (XI of 1922) - Indian
Application of Mr. T.C. Foster of Rangoon
under Section 66 (3) - Judgment of the
High Court of Judicature at Rangoon.

Sir,

I have the honour to forward a copy of the judgment referred to above.

I have the honour to be,

Sir,

Your most obedient servant,

Jamil Ahsan
6/5/29.

for Commissioner of Income-tax, Burma.

Jone
Entd

38

[G. 106 (a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 27 May 1929

No. 4626 Encls. (

A copy of the marginally* noted ~~letter, with enclosures~~ is forwarded to the Collector and Assistant Commissioner of Income-Tax C&M. Station, Bangalore for information and favour of return.

*No. Judgment of the Rangoon High Court in Civil Mis. Application NO.141/28 dated the from the

I.N.37

For Secretary to the Resident.

1212—16-8-1929—5,000—RPB.

M. Ramachandrayya
17.5.29

From

A. Raisman, Esquire, I. C. S.,
Commissioner of Income-tax, Punjab,
N.W.F. and Delhi Provinces.

39

To

The Commissioner of Income-tax
Bangalore

5751
12/6/29

273

No.R-14-(i)-18/29, dated Lahore the 5th June 1929.

Sir,

Reference to High Court-Lahore- Indian Income-tax Act, XI-1922-Section 10(2) (vi) Proviso.(b)- Karam Ilahi Mohd.Shaffi-Delhi Assessment 1926-27.

I have the honour to forward herewith a copy of the High Court judgment in the case referred to above

I have etc., etc.

Rameshwar Nath

for Commissioner of Incometax, Pb.,
N.W.F. and Delhi Provinces, Lahore

From

A. Raisman, Esquire, I. C. S.,
Commissioner of Incometax, Punjab,
N.W.F. and Delhi Provinces.

40

To

The Commissioner of Income-tax,
Bangalore.

No.R-14-(i)-14/29, dated Lahore, the 4th June 1929.

Sir,

Indian Income-tax Act (XI-23)-Section 66(2)-Reference to High Court-Lahore-Hesaro, Chhunna Mal Dalig Ram- Delhi.

I have the honour to forward herewith a copy of the High Court judgment in the case referred to above.

I have etc., etc.,

For Comsr. of Incometax, Punjab, N.W.F. & Delhi Provinces.

[E.O. 106 (a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 22nd June 1929.

No. 3863 Enclos. 2

~~A copy of~~ The marginally* noted papers are forwarded in original to the Collector and Assistant Commissioner of Income-Tax, C & M Station, Bangalore for information and favour of return.

Encl. 1. No. Judgment of the Lahore High Court in Reference Side, ~~dated the~~ Civil No. 31 of 1927.

Encl. 2. 2. Judgment of the Lahore High Court in Reference Side, Civil ~~from the~~ No. 34 of 1928.

Major,
For Secretary to the Resident.

1212—16-3-1929—5,000—RPB.

M. Ramachandra Rao
15-6-29.

BURMA.

No. 8209 Misc. 149.
27-28

From

J.F. [illegible], I.C.S.,

Commissioner of Income-tax, Burma,

Rangoon.

To

The Commissioner of Income-tax,

Bangalore.

Rangoon, the 10th June 1929.

Subject:- Income-tax Act, Indian (XI of 1922) - Section 66 (3) - Reference to the High Court - Application of the [illegible] Chettyar Firm, Rangoon, in connection with its assessment for 1925-26.

Sir,

In continuation of my letter No. 5465/Misc.149 5469 27-28 dated the 6th April 1929, on the subject noted above I have the honour to forward herewith a copy of the judgment of the High Court, Rangoon.

I have the honour to be,
Sir,
Your most obedient servant,

for Commissioner of Income-tax, Burma.

Usual draft submitted

C.V.Q. 4.2.29

HHR 10/6.

Postal Address:-
INCOME-TAX BUILDING,
379 (New), DALHOUSIE STREET.

Telegraphic Address:-
" C O M I N T A X. "

Telephone: (6333 GOVT.
(888 CENT.

B U R M A.

No. 8187

From

J. F. SHEEHY, ESQ., I.C.S.,
Commissioner of Income-tax, Burma.

To

The Commissioner of Income-tax,

B A N G A L O R E.

Dated Rangoon, the 5th June, 1929.

Subject:- Income-tax Act (XI of 1922) - Indian - and Specific Relief Act - Application of V.L.A. Chettyar Firm of Gyobingauk under Section 66(3) of Income-tax Act and Section 45 of Specific Relief Act - Judgment of the High Court of Judicature at Rangoon.

* * *

Sir,

I have the honour to forward a copy of the judgment referred to above.

I have the honour to be,

Sir,

Your most obedient servant,

for Commissioner of Income-tax, Burma.

[E.O. 106 (a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 8th July 1929.

No. 5837 Enclos. 2
273/1926

The papers are marginally* noted ~~A copy of the letter, with enclosure, is~~ forwarded to the Assistant Commissioner of Income-tax, C & M Station, Bangalore, for information and favour of return.

*~~No~~ Judgments of the High Court of Rangoon in Civil Misc. ~~dated the~~ Applications 70 and 96 of 1928, ~~from the~~

For Secretary to the Resident.

1212—16-3-1929—5,000—RPB.

4.7.29

No. I.T. G/No./20/29-30/E.Judgments

Office of the
Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore,

Dated the 8th July 1929.

From
G. H. Cooke, Esq., M.C., I.C.S.,
Collector and Asst. Commr. of Income-Tax,
Civil and Military Station,
Bangalore.

To

The Secretary to the Resident
and Commissioner of Income-tax,
Civil & Military Station, Bangalore.

Subject.—

Sir,

I have the honour to return herewith the enclosures received with your Office Nos. noted below.

S.R. 35	3877/273-28	dated 30-4-1929
S.R. 36-C	4279/273-28	dated 13-5-1929
S.R. 38	4606	dated 27-5-1929
S.R. 41	3363/273-28	dated 22-6-1929

I have the honour to be,
Sir,
Your most obedient servant,

For Collector and Asst. Commr.
of Incometax.

KMP.

May be filed.

INCOME-TAX ACT, INDIAN (XI OF 1922)—SECTION 66 (3)—REFERENCE TO THE HIGH COURT. APPLICATION OF THE P.K.N. CHETTYAR FIRM, RANGOON, IN CONNECTION WITH ITS ASSESSMENT FOR 1925-26.

STATEMENT OF FACTS AND OF OPINION BY COMMISSIONER OF INCOME-TAX, BURMA.

RANGOON: OFFICE OF THE SUPERINTENDENT, GOVERNMENT PRINTING AND STATIONERY, BURMA. MARCH 1929.

SUBJECT :—*Indian Income-tax Act*, 1922—*Section* 66 (3)—*Application of the P.K.N. Chettyar Firm, Rangoon, in connection with its assessment for* 1925-26.

In accordance with the order of the High Court of Judicature at Rangoon in Civil Miscellaneous Case No. 70 of 1928, dated the 3rd January 1929, the following case is stated for the decision of the High Court under the provisions of section 66 (3) of the Indian Income-tax Act, 1922.

2. The question of law in respect of which I am directed to state a case arises from the assessment of the P.K.N. Chettyar Firm for the year 1925-26 under section 23 (4) of the Act and is as follows :—

"Whether, in the circumstances of this case, it was open to the Income-tax Officer to require the production of the books of the Jaffna and Alleppey branches of the assessee ; and, if not, whether the failure to comply with such a requisition is a default within the meaning of section 23 (4) of the Act and renders the assessee liable to assessment under that sub-section ?".

3. The following are the facts of the case material to the question at issue :—

The partners of the firm, who are taxed through their agent in Rangoon, are two Hindu undivided families resident in the State of Pudukotta (outside British India). Inspection of the Rangoon books of account showed that the firm was carrying on business in rice in Rangoon and Akyab by purchasing and exporting rice to Jaffna (Ceylon) and that it also had business in Alleppey (Travancore State) and in Moovar and Malacca (Straits Settlements).

In order to determine whether there were any other taxable profits of the firm, a notice was issued on 4th March 1926 to the Rangoon agent requiring him to produce on the 24th March 1926 (along with other documents not relevant to the question above) the Jaffna and Alleppey accounts.

This notice contained a warning to the effect that if the Jaffna and Alleppey accounts were not produced the income deemed to arise from these businesses under section 42 (1) would have to be estimated. The Rangoon agent sent the notice to the partners and applied for an adjourment up to the 31st March, which was granted.

On the 31st March, the Rangoon agent (Somasundaram Chettyar) appeared before the Income-tax Officer and filed certain affidavits, but nothing was tendered in respect of the Jaffna and Alleppey accounts. The agent was given time up to the 29th April to produce these accounts. He was at the same time warned that in the event of default the assessment would be made without further notice.

On the 29th April, a pleader appeared for the assessee and filed certain affidavits, one of which was by Nagappa Chettyar, one of the partners, who stated that there were no transactions between Rangoon and Alleppey in the account year.

As regards Jaffna, he stated that no profits were derived at Rangoon during the accounting period by business connection with Jaffna ; he, however, requested that an audited abstract of the Jaffna accounts by competent and recognized auditors might be accepted in place of the books, as it would dislocate the Jaffna business if the accounts relating thereto were removed. The Income-tax Officer agreed to accept audited profit and loss statements and balance sheets and day book extracts relating to the Jaffna and Alleppey businesses and [by a notice under section 22 (4), dated the 4th August 1926] fixed the 30th October 1926 for the production of these documents.

In response to this notice, two communications were received from the partner Nagappa Chettyar, from Madras, urging that the firm was not liable to be assessed on profits arising outside British India. Finally, a hearing was granted to the assessee's advocate from Madras. At this hearing, the Income-tax Officer explained that the profits from business connection between Jaffna and British India (Rangoon and Akyab) were assessable under Section 42 (1) read with section 4 (1). But the assessee's advocate adhered to the position that the Jaffna accounts could not be produced.

In the absence of the accounts and documents, and even of the audited profit and loss statement for the Jaffna business, the Income-tax Officer made the assessment under Section 23 (4) by his order dated 16th April 1927.

4. My opinion on the question at issue is that the Income-tax Officer had power to require the production of the books of the Jaffna and Alleppey branches and that therefore the second part of the question does not arise. Under the provisions of Section 22 (2) of the Act, the assessee who is a non-resident is required to return his toal income, that is, his income which accrues or arises or is received in British India [Section 4 (1)] and his income which is deemed to accrue or arise in British India [(Section 42 (1)] By Section 22 (4) the Income-tax Officer is given the power to require the assessee "to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require." The only qualification to that power is contained in the proviso to Section 22 (4) and has no bearing on this case. Now the Income-tax Officer had every reason to believe that the assessee earned an income which was taxable under section 42 (1) and that he could only ascertain the correct amount of this income by a scrutiny of the Jaffna and Alleppey accounts. (It is to be noted that the assessee refused to produce not only the actual books of account but even audited profit and loss statements and day book extracts with which the Income-tax Officer said he would be satisfied.) I submit therefore that a limitation on the Income-tax Officer's power such as is contended for by the assessee cannot be read into Section 22 (4). In support of this view I refer to *N.D. Radhakishen, & Sons* v. *Commissioner of Income-tax, Punjab and North-West Frontier Province* A.I.R. (1927) Lahore 5 ; 2 I.T.C. 345.

5. In the High Court's order directing this reference, the case of Duni Chand vs. the Commissioner of Income-tax, Punjab, (1928, I.L.R. Lahore IX 464) is cited as having some bearing on the question at issue in this case. The view taken by the Lahore High Court in the case referred to appears to be that, before an assessee could be held to be in default for the purpose of applying Section 23 (4), it should be shown that he is liable to be assessed. In this connection, I note that while the assessee firm in this case at a certain stage of the proceedings denied its liability to be assessed on the profits from its foreign businesses, in its application to the High Court under Section 66 (3) it admits what it describes to be a "special and limited" liability under Section 42 (1),

J. F. SHEEHY,
Commissioner of Income-tax, Burma.

Dated Rangoon, the 14th April 1929.

G.B.C.P O.—No. 8, Com. of I. T. 28-3-29—50

INCOME-TAX ACT, INDIAN (XI OF 1922), SECTION 66 (2)—REFERENCE TO THE HIGH COURT—APPLICATION OF THE BURMA CORPORATION, LIMITED, IN CONNECTION WITH ITS ASSESSMENT FOR 1928-29.

STATEMENT OF FACTS AND OF OPINION BY COMMISSIONER OF INCOME-TAX, BURMA.

RANGOON: OFFICE OF THE SUPERINTENDENT, GOVERNMENT PRINTING AND STATIONERY, BURMA. APRIL 1929.

Income-tax Act, Indian, 1922, Section 66 (2)—Reference to High Court—Application of the Burma Corporation, Limited, in connection with its 1928-29 assessment.

I have the honour to refer to the High Court under section 66 (2) of the Indian Income-tax Act, 1922, a question of law arising out of the order of the Commissioner on the appeal of the Burma Corporation, Limited, (hereafter called the Company) against its assessment for 1928-29.

2. In the Company's assessment for the year 1928-29 there was included a sum of Rs. 5,40,599 which was the Company's contribution during the accounting year to its Staff Provident Fund. The Company claimed that this sum was allowable expenditure incurred for the purpose of earning the profits, but the assessing officer (in this case an Assistant Commissioner) did not allow it and his decision was upheld by the Commissioner on appeal. The Company being dissatisfied with this decision has asked me to make this reference.

3. The Company's Staff Provident Fund came into effect as from the 31st December 1921 and is governed by certain Rules and Regulations a copy of which is annexed and marked X. On the 3rd November 1926 a trust deed was executed by which the Company vested in trustees, subject to certain trusts, a fund sufficient to cover the Company's liability under the rules aforesaid and undertook to add to this fund from time to time so as to cover the liability outstanding. A copy of this Trust Deed is annexed and marked Y.

4. The following is a summary of the relevant provisions of the Rules and the Trust Deed :—

(*a*) The Provident Fund (which must be distinguished from the Provident Trust Fund) consists of contributions by each member to his account called "A" account, contributions by the Company to his accounts called "B" and "C" accounts and interest at 5 per cent allowed by the Company on all three accounts.

(*b*) The Fund is controlled by the Directors of the Company whose decision is final.

(*c*) The Directors may expel any member from the Fund and completely discharge its liability to him by paying him his "A" account with interest: but this power will only be exercised for reasons which in the view of the management require such action to be taken.

(*d*) The amounts at the credit of a member's "A", "B" and "C" accounts may not be withdrawn until he leaves the Company's service, and even then the Directors can withhold portion of the "B" and "C" accounts if the member has not served for the required period.

(*e*) If a member is dismissed for misconduct or leaves without permission he shall be paid only his "A" account with interest.

(*f*) In addition to the foregoing provisions it is definitely stated that "no rights in or to monies at the credit of a member's 'B' or 'C' account shall vest in such member."

(*g*) The Company has a first lien on the amounts standing to a member's credit in the Fund in respect of loss, damage, etc., caused to the Company by his misconduct, negligence, etc.

(*h*) The Directors may wind up the Fund on giving six months' notice to the members.

(*i*) The functions of the Trustees may be summarised as follows :—

They are to receive from the Company and hold a fund sufficient to cover the Company's liability under the Provident Fund Rules. The amount payable to this Fund by the Company is computed by and certified to by the auditors of the Company. The Trustees must obey the directions of the Company in regard to investing the Fund or realizing investments belonging to the Fund. Any excess over the Company's liability is to be held by the Trustees on trust for the Company and the Company may recover the excess

from them. They must pay the income of the Fund to the Company. Subject to the foregoing the Trustees hold the Fund for the members of the Provident Fund and in the case of a winding up, they must first satisfy all claims arising under the rules and then pay the entire balance to the Company. If the Trustees cannot at any time lawfully apply the fund and its income to the purposes specified, the trusts shall determine and the fund shall be made over to the Company.

(*k*) All claims of members against the Fund shall in the first instance be settled and paid by the Company.

5. The Company's contribution to the Provident Fund during the accounting year ending 30th June 1927 was Rs 5,40,599. It is by no means clear that this amount representing contributions for the year in question was actually paid out to the Trustees during the year but in order not to complicate matters, I take it to be the fact that this sum of Rs. 5,40,599 being the Company's contributions to the Provident Fund was paid over to the Trustees during the accounting year.

6. The question of law which I am asked to refer is as follows :—

"Are the contributions of the Burma Corporation, Limited, to the Company's Staff Provident Fund assessable to income-tax and super-tax ?"

As noted in paragraph 4 (*a*) above the Provident Fund must be distinguished from the Provident Trust Fund and, as I understand the Company's case, it is based on the establishment of the Trust Fund. The question therefore refers to contributions to the Provident Trust Fund and I discuss it on that footing. But if the Company should contend that, irrespective of the amounts paid to the Trustees, all contributions credited in the Provident Fund books to its employees are allowable, I submit that there is no substance in this contention since the contributions in question if not paid to the Trustees remain in the Company's possession and do not leave it even temporarily.

7. It is admitted by this Department that contributions to Provident Funds constituted under irrevocable trusts are allowable expenditure under section 10 (2) (ix) of the Income-tax Act. Where there is an irrevocable trust it is clear that the employer has finally parted with his contributions. But in this case there is no question of irrevocable payments since there are many contingencies depending on the will of the Company in which the Company can reduce its liability and recover its contributions.

8. My opinion on the question referred therefore is that payments to the Trustees are not "expenditure incurred" within the meaning of section 10 (2) (ix) since the Company has not paid out finally or parted irrevocably with these sums. I refer to *Nedungadi Bank, Limited* v. *Commissioner of Income-tax, Madras* [(1926)I.L.R. 49 Mad. 910 ; 2 I.T.C. 243] in which a similar question was decided. It appears to me clear that taking the Rules and the Trust Deed as they are, expenditure allowable under section 10 (2) (ix) is incurred by the Company only when payments are finally made to members. Such payments are in fact being allowed in the Company's assessments.

RANGOON :
Dated the 17th April 1929.

J. F. SHEEHY,
Commissioner of Income-tax, Burma.

BURMA CORPORATION, LIMITED.

Rules and Regulations of the Provident Fund for Members of the Staff of Burma Corporation, Limited.

Name and Object.

The Fund shall be called the Burma Corporation Staff Provident Fund, and its object shall be to encourage thrift among the employees of the Company eligible for membership.

The Fund shall come into effect as from the thirty-first day of December, 1921, and shall be governed by the following Rules and Regulations.

Control.

1. The Fund shall be controlled by the Directors of the Company (hereinafter called "the Management") whose decision with reference to the interpretation and application of any of these Rules and to the Fund generally shall be final. All monies, securities or other property belonging to the Fund shall be credited in the Books of the Company.

2. The Fund shall be retained by the Company who guarantee the payment of the principal sum together with interest at the rate of 5 per centum per annum thereon.

Membership.

3. The Fund shall be divided into two classes :—

Class I.—For employees of the Company who are for the time being in receipt of a salary of over Rs. 3,600 per annum.

Class II.—For employees who are for the time being in receipt of a salary of Rs. 3,600 per annum or less.

4. Any employee (whether male or female) of the Company shall be eligible for membership of the Fund. Provided that the Management has the right to disapprove of any employee becoming a Member of the Fund and to prohibit his membership and also at any time to terminate the membership of any employee. The power of expulsion of any Member herein vested in the Management shall only be exercised for reasons which in the view of the Management require such expulsion and in the event of such expulsion the receipt by the Member of payment of the sums contributed by him out of salary with accumulatad interest thereon shall be considered a full and complete discharge to the Company of all liability under this Fund.

Agreement.

5. Any employee of the Company eligible as beforementioned and desiring to become a Member of the Fund shall sign an Agreement in the form appended hereto, and thereafter his salary shall be debited monthly with the payment to the Fund of an amount equal to eight and one-third per centum of such salary in the case of Class I Members and to five per centum in the case of Class II Members.

"A" Account.

6. Payments as above shall be credited to an account to be opened in the name of each Member to be denominated his "A" Account on which interest at the rate of five per centum per annum shall be credited as at the 30th June and 31st December in every year subject to the provisions of clauses 16 and 17 hereof.

"B" Account.

7. On or as at the 31st day of December in each year (beginning in 1922) a Bonus equal to the amount, or in the case of Class II twice the amount, subscribed by each Member to his "A" Account during that year, but not exceeding eight and one-third per centum, or, in the case of Class II ten per centum, of each Member's salary for the year shall be credited by the Management to another account to be opened in the name of each Member and to be denominated his "B" Account. Interest at the rate of five per centum per annum calculated on the balance of his "B" Account shall be added to each Member's "B" Account as at the 30th June and 31st December in every year. Each Member joining before the 31st December 1921, shall receive a Bonus at the rate of eight and one-third per centum, or, in the case of Class II ten per centum of the salary actually received by him during the years 1920 and 1921 which bonus will be credited to his "B" Account aforesaid as at the 31st December 1921.

"C" Account.

8. Subject to the proviso contained in this clause, the Company shall, in respect of each calendar year in which it may pay on its paid-up Ordinary Share Capital a cash dividend, place to the credit of each Member on the 31st December in each year under another account to be denominated his "C" Account a percentage of his salary from the Company during such year equal to the rate of dividend paid by the Company in that year on the amount of its paid-up Ordinary Share Capital. Provided always that the sum to be placed to the credit of a Member in respect of the "C" Account shall not exceed, together with the amount to be credited to his "B" Account, fifty per centum of his salary for the year concerned. Interest at the rate of five per centum per annum calculated on the balance of his "C" Account shall be added to each Member's "C" Account as at the 30th June and 31st December in every year.

Definition of Salary.

9. For the purposes of these Rules salary shall be deemed to mean the monthly sum paid to the employee for wages, *plus* any overtime, acting allowance, and any commissions, but shall exclude bonus payments, messing, house allowance, lodging-money, jungle allowance, travelling expenses and interest on "A," "B" and "C" Accounts and all similar payments.

Pass Books.

10. Each Member shall be supplied with a Pass Book which shall show the position of his "A," "B" and "C" Accounts. Such Pass Book shall be balanced as at the 30th June and 31st December in every year and shall be signed by a responsible officer of the Company. If no objection to any

statement therein contained is made within seven days of such balancing, the statements therein shall be deemed to be true.

Company's lien.

11. The Company shall have a first and paramount lien upon the amount from time to time standing to the credit of each Member in respect of any loss, damage, costs or expenses which the Company may at any time pay, sustain, or be put to by reason of any act of embezzlement, gross negligence or default of or by such Member, or in respect of any advances against pay which may have been made to him firstly upon his own subscriptions to the Fund and the interest thereon, and thereafter in respect of the contributions made by the Company and the interest thereon.

Withdrawals.

12. No withdrawals shall be permitted from the amounts at the credit of a Member's "A," "B" and "C" Accounts until he shall finally leave the Company's service, when subject to any lien that may exist he shall be entitled to withdraw (i) the amount standing to the credit of his "A" Account, (ii) five-tenths of the amount standing to the credit of his "B" Account provided that he has completed five years of twelve calendar months' continuous service with the Company and an additional one-tenth of such "B" Account for each further year's service up to a total of ten years' service, (iii) the amount standing to the credit of his "C" Account only provided that he has completed ten years of twelve calendar months' continuous service. Provided always that where a Member has left the employ of the Company on account of ill-health or for other sufficient cause the Management may in their absolute discretion pay to such Member or to such person as the Management may decide to be his representative the sum credited to his "B" or "C" Accounts or any less sum, and further that the Management may under special circumstances make advances at their discretion to any Member as against the amount standing to the credit of his "A" Account and such advances shall bear interest at the same rate as that which the Company is allowing upon such "A" Account.

Dismissal.

13. If any Member shall be dismissed from the service of the Company for misconduct (or shall retire from the service of the Company without its consent) he shall (subject to any claims under clauses 11 and 12 hereof) be paid only the amount then standing to his credit in "A" Account with accrued interest thereon to the date of dismissal. All monies standing to the credit of his "B" or "C" Accounts with accrued interest thereon shall remain the property of the Company.

Vesting of rights in "B" and "C" Accounts.

14. No rights in or to monies at the credit of a Member's "B" or "C" Account shall vest in such Member.

Commencement of Service.

15. For the purposes of clause 12 a Member's service shall be deemed to commence at the time when he was first employed by the Company or its predecessors in title whether such employment began before or after the commencement of this Fund.

Prohibition to transfer or assign.

16. No members shall be entitled to transfer or assign whether by way of security or otherwise howsoever his interest or any part thereof in the Fund and no such transfer or assignment shall be valid and the Management shall not recognize or be bound by notice to them of any such transfer or assignment, and all monies standing in the books of the Fund to the credit of any member so transferring or assigning his interest as aforesaid shall further be forfeited as from the date of such transfer or assignment to the use of the Company and be dealt with accordingly, and further if any prohibitory order or attachment or process of a Civil Court be served upon the Management or any person on their behalf, by which any monies standing to the credit of any Member in the books of the Fund shall be attached or be ordered to be paid into Court, or be ordered to be withheld from such Member, such monies shall be forefeited to the use of the Company and be dealt with accordingly. Provided that the Management shall be at liberty in their uncontrolled discretion at any time thereafter to give such monies or any part thereof for the benefit of such Member, his or her wife or husband, relations or dependents.

Variation of terms by Management or abolition of Fund.

17. The Management shall have absolute power without assigning any reason for so doing on giving the Members for the time being six months' previous notice of their intention to do so, either (*a*) to vary in such way as the Management in their absolute discretion may think fit the terms of membership of the Fund including the contributions to be made by Members and the Company thereto, the rate of interest payable thereon and the periods of service required to give any benefits in the Fund; or (*b*) to resolve that the Fund be wound up. In either case the variation or winding up shall not be retrospective.

18. Only in the event of the Management varying the terms of Membership so as to make them less favourable to Members than these rules shall any Member who does not elect to continue as a Member be paid the amounts at the credit of his "A," "B" and "C" Accounts which shall thereupon be closed.

I have read the above Rules and Regulations and understand them and I hereby agree to become a Member of the Provident Fund and to abide by the said Rules and Regulations.

*Employee's Name*_____

*Employee's Signature*_____

*Witness*_____

_____

_____

*Date*_____

NOTE.—All signatures in the Vernacular must have the names in Roman Characters written above. Employees unable to sign their names must give their thumb mark impressions.

Y.

Trust Deed.

TO ALL TO WHOM THESE PRESENTS SHALL COME, BURMA CORPORATION, LIMITED, a Company incorporated under the Indian Companies Act and having its Registered Office situated at No. 11, Strand Road, Rangoon, SENDS GREETING : WHEREAS in these presents each of the following expressions shall (wherever the context so permits) have the meaning set beside it, that is to say :—

"THE CORPORATION" shall mean Burma Corporation, Limited, and its assigns.

"THE TRUSTEES" shall mean the Trustees or Trustee of these presents for the time being whether original or substituted.

"THE PROVIDENT FUND" shall mean Burma Corporation Staff Provident Fund which was established by the Corporation with effect as from the 31st day of December, 1921.

"THE RULES" shall mean the rules for the time being regulating the Provident Fund.

"THE ACCOUNTING DAYS AFORESAID" shall mean the 30th day of June and 31st day of December in each year or other the days in each year upon which the half-yearly accounts of the Corporation are taken and audited in Rangoon.

"THE PROVIDENT TRUST FUND" shall mean all sums of cash and all securities from time to time paid or delivered to the Trustees by the Corporation pursuant to the provisions of or for the purposes of these presents.

AND WHEREAS the Provident Fund consists of the following, that is to say :—

(*a*) Monthly contributions by each member out of salary credited to an account in the name of each member denominated his "A" Account.

(*b*) Annual contributions by the Corporation as specified by the Rules credited to an account in the name of each member denominated his "B" Account.

(*c*) Contributions by the Corporation as specified by the Rules credited to an account in the name of each member denominated his "C" Account.

(*d*) Interest allowed by the Corporation upon the balance standing to the credit of each of "A," "B" and "C" accounts at the rate of five per cent. per annum and credited half yearly as at the 30th day of June and the 31st day of December in every year.

AND WHEREAS the rights and obligations of the Corporation and of its employees in respect of the Provident Fund are governed by the Rules which under the provisions of Clause 17 of the Rules are subject to alteration in the manner specified in that Clause AND WHEREAS the Corporation has established and intends to maintain from time to time in the hands of the Trustees and subject to the trusts hereinafter declared a fund to cover the amount of its liability under the rules as ascertained at each of the accounting days aforesaid AND WHEREAS the amount of the liability of the Corporation under the rules as at the 31st day of December 1925, amounted to the sum of Rs. 12,58,782-4-11.

AND WHEREAS on or before the execution of these presents the Corporation has delivered to Robert Duncan McKenzie, Gilbert Bowker Hall and Henry Ponsford the persons who by virtue of the provisions of clause 1 hereof are the first *ex-officio* Trustees of these presents, securities of the Government of India, particulars whereof are set forth in the Schedule hereunder written.

NOW THESE PRESENTS WITNESS as follows :—

1. The Corporation DOTH HEREBY DECLARE that the Trustees of the presents shall be as follows :—

(*a*) THE MANAGER for the time being in Rangoon of Lloyds Bank, Limited.

(*b*) THE SENIOR PARTNER for the time being in Rangoon of the firm who are for the time being the Auditors of the Corporation.

(*c*) THE SECRETARY for the time being in Rangoon of the Corporation.

And that the statutory power of appointing a new trustee or new trustees hereof is hereby vested in the Corporation.

2. The Corporation DOTH HEREBY DECLARE that during the life of the last survivor of the issue now living of Her Late Majesty Queen Victoria and during such further period (if any) as may be lawful the trustees shall stand possessed of the Provident Trust Fund UPON THE TRUSTS following that is to say :—

(*a*) The Trustees shall from time to time in accordance with directions received from the Corporation realise any portion of the Provident Trust Fund represented by any security or securities held by the Trustees which the Corporation desires to be realised and stand possessed of the proceeds upon the trusts hereinafter declared and contained:

(*b*) The Trustees shall from time to time in accordance with directions received from the Corporation invest in or upon such security or securities authorised by the law of British India for the investment of Trust Funds as the Corporation may select any portion of the Provident Trust Fund for the time being in their hands and uninvested or shall place the same upon deposit with any Bank selected by the Corporation:

(*c*) The Trustees shall stand possessed of so much of the corpus of the Provident Trust Fund as shall be in excess of the liability of the Corporation under the rules as ascertained at each of the accounting days aforesaid UPON TRUST for the Corporation who shall be at liberty from time to time to recover from the Trustees such excess, the Trustees being hereby absolved from requiring any further evidence of excess beyond the certificate of the Auditors for the time being of the Corporation.

(*d*) Subject to sub-paragraphs (*c*) and (*e*) of this clause the Trustees shall stand possessed of the corpus and income of the Provident Trust Fund UPON TRUST for the members for the time being of the Provident Fund and upon a winding up of the Provident Fund or of the undertaking of the Corporation UPON TRUST to apply all monies in their hands representing both capital and income first in satisfaction of all claims then arising under the rules and secondly in payment of the entire balance to the Corporation.

(*e*) Until the Provident Fund or the undertaking of the Corporation shall be in process of being wound up and the income of the Provident Trust Fund become subject to the trusts declared by sub-paragraph (*d*) of this clause to pay the income of the Provident Trust Fund to the Corporation.

(*f*) If for any reason the Trustees shall at any time be unable lawfully to apply the Provident Trust Fund and the income thereof or any part of such fund or income for any of the purposes aforesaid, then the trusts hereby created shall detemine and the Provident Trust Fund and the income thereof or such part thereof as aforesaid shall forthwith be made over to the Corporation.

3. The Corporation (so as to bind itself so far as it lawfully can or may) in consideration of the services rendered to the Corporation by each member of the Provident Fund DOTH HEREBY COVENANT with the Trustees acting for and on behalf of the members of the Provident Fund jointly and each of them severally that whenever upon any of the accounting days aforesaid it shall be ascertained that owing to market depreciation of the securities held by the Trustees or otherwise that the corpus of the Provident Trust Fund is less than the amount of the liability of the Corporation under the rules the Corporation will pay to the Trustees to be held by them upon the trusts hereinbefore declared such a sum as will make good the deficiency payment under this clause to be satisfied by cash or by some security or securities authorised by the law of British India for the investment of Trust Funds or partly by one and partly by the other any security or securities to be valued for the purpose of this clause at their market value as disclosed in the issue of "Capital" (or by other the source of information agreed upon between the Corporation and the Trustees) most recently available in Rangoon prior to delivery to the Trustees of the security or securities aforesaid.

4. All claims arising on the part of any member of the Provident Fund against that Fund shall in the first instance be settled and paid by the Corporation and in all adjustments of the liability of the Corporation to the Trustees to be made half-yearly as hereinbefore provided the Trustees shall be entitled and bound to act upon the Certificate of the Auditors for the time being of the Corporation as to the amount of such payments made by the Corporation during the preceding half year.

5. None of the Trustees shall be liable for any act or omission not due to his own wilful default and the Corporation shall indemnify the Trustees and each of them from and against all claims, demands, costs, charges and expenses which they may incur or become responsible for arising out of or in relation to the trusts assumed by them under these presents.

6. The Trustees are hereby expressly authorised to transfer or permit to be transferred all securities from time to time comprised in the Provident Trust Fund into the name of any Bank with which such securities are deposited for safe custody and by which such securities are held to the order of the Trustees.

IN WITNESS WHEREOF these presents have been executed the Third day of November, 1926,

THE SCHEDULE ABOVE REFERRED TO.

Amount and description of Government of India security.	Market Quotation.	Value at market rate.
Rs. 14,25,000 4 per cent. Loan 1960-70 ...	88½	Rs. 12,61,125

THE COMMON SEAL OF BURMA CORPORATION, LIMITED, was hereto affixed in the presence of :—

Seal of Burma, Corporation, Limited.

J. HOGG,
A. R. FINLAY, } *Directors.*

HENRY PONSFORD. *Secretary.*

We accept the trusts of these presents and hereby acknowledge receipt of the securities of the Government of India, particulars whereof are set forth in the above written Schedule.

Dated this Second day of November, 1926.

R. D. McKENZIE,
Manager, Lloyds Bank, Ltd., Rangoon.

GILBERT B. HALL,
Senior Partner in Rangoon of Allan Charlesworth & Co., Auditors.

HENRY PONSFORD,
Secretary, Burma Corporation, Ltd., Rangoon.

G.B.C.P.O.—No. 9, C.I.Tax, 10-4-29—52.

27/16 5.

INCOME-TAX ACT, INDIAN (XI OF 1922), SECTION 66 (2)—REFERENCE TO THE HIGH COURT—ASSESSMENT OF THE E.M. CHETTYAR CONCERN, MOULMEIN.

STATEMENT OF FACTS AND OF OPINION BY COMMISSIONER OF INCOME-TAX, BURMA.

RANGOON : OFFICE OF THE SUPERINTENDENT, GOVERNMENT PRINTING AND STATIONERY, BURMA. APRIL 1929.

SUBJECT.—*Indian Income-tax Act*, 1922, *section* 66 (2)—*Reference to High Court—Assessment of the E.M. Chettyar Concern, Moulmein.*

Under section 66 (2) of the Indian Income-tax Act, 1922, I have the honour to refer to the High Court five questions of law arising out of the orders passed under sections 31 and 32 of the Act in the abovenamed petitioners' appeals in the matter of their assessment for the year 1925-26.

2. The relevant facts are as follows :—

(*a*) The petitioners are a Hindu undivided family of Puduvayal, Ramnad District, Madras Presidency. They carry on money-lending business in different places but the only business with which this reference is concerned is that carried on at Moulmein under the vilasam E.M.

(*b*) For the year 1925-26 the petitioners returned a loss of Rs. 7,508 and were assessed by the Income-tax Officer, Moulmein, on an income of Rs. 1,00,386 of which Rs. 78,413 was income from the business at Moulmein. The accounting year for the assessment began on the 13th April 1924 and covered therefore the accounts for the new agency which began on the 24th April 1924 and the accounts for the old agency prior to that and which were kept concurrently with the accounts of the new agency.

(*c*) Against this assessment the petitioners appealed under section 30 of the Act. While dealing with the appeal the Assistant Commissioner was shown both the old agency and the new agency accounts of the petitioners, but as his attention was not at that time directed to the points which threw suspicion on these accounts he did not make that careful examination of the old agency accounts which subsequent events showed to be necessary. When the Assistant Commissioner did become suspicious of the accounts he, in the exercise of his power under section 31(2), directed the Income-tax Officer to make further enquiry. On the 20th May 1927 the Income-tax Offier submitted a report which afforded strong grounds for believing that the accounts on which the assessment was based were not the full and complete accounts of the petitioners' business at Moulmein.

(*d*) The grounds for this belief are given in the Assistant Commissioner's appellate order as follows :—

"The balance sheet filed by the appellant-concern in connection with the assessment which is the subject of the present appeal showed that the amount of loans outstanding with their customers was Rs. 6,01,569 at the end of Rakthakshi (1924-25), whereas the balance sheet filed in connection with the previous year's assessment showed the amount outstanding at the end of Rudhirothkari (1923-24) as Rs. 9,87,266. There was thus a decrease of over Rs. 3,85,000 in the amount of loans advanced to customers. In the absence of evidence to show that there had been a marked dimunition in the business of the appellant-concern this abnormal decrease in the volume of their transactions was extremely suspicious. From a comparison of the details of interest payments for the two years it appeared that a payment of about Rs. 22,000 (Rs. 17,730-7-0 and Rs. 4,214-7-6 respectively) was made under the headings 'M.R.M.V.' and 'Land Purchase Account' in the year Rudhirothkari, whereas in the year Rakthakshi the payment made on the first account was Rs. 1,427-4-6 only. In other words the capital subscribed by M.R.M.V. had shrunk from over Rs. 2 lakhs in Rudhirothkari to about Rs. 14,000 only in Rakthakshi. As M.R.M.V. are initials denoting various members of the appellant-concern's family an explanation was obviously required of this extraordinary reduction in their capital as shown in the accounts produced. Secondly, there were loans aggregating Rs. 1,34,500 outstanding against one G. M. Lotiah. This amount was transferred to the accounts of the new agency produced before the Department. But the transfer was not effected in a manner which is ordinarily employed. The usual method of recording such a transfer would have been to make a debit entry against Lotiah with a corresponding credit entry in the folio 'Old Account' in the new agency books. But what the appellant-concern did was to make the credit entry in the account of Ahmad Ajam Pippidi instead of in the 'Old Account' folio. Thirdly, in the Pippidi account itself the transfer from the old agency to the new agency was effected by three separate transactions on three different dates instead of by a single transaction which is the usual method. Fourthly, certain transactions with one Mr. Lonsdale were also shown in the account of Ahmad Ajam Pippidi instead of in his own accounts. According to the new agency accounts produced the transactions with Mr. Lonsdale were of recent date and the agent alleged that the appellant-concern had no previous transactions with this gentleman. Documents found in Mr. Lonsdale's possession, however, proved that he had been dealing with the appellant-concern for many years previously. Among these documents were two receipts, for Rs. 3,000 and Rs. 2,000 respectively, granted by the agent

and by the proprietor's son. The particular transactions to which these receipts related did not find a place in the accounts produced. These receipts moreover proved that Mr. Lonsdale's dealings were with the appellant-concern and not with Ahmad Ajam Pippidi. The above facts showed that the Ahmad Ajam Pippidi account was probably a fictitious account. Fifthly, the accounts of the O.R.M. firm at Theinzeik in the Thatôn District showed that on the 17th September 1924 a sum of Rs. 5,000 was borrowed from the appellant-concern at Moulmein. The pro-note was executed not in the name of E.M. but in the name of Puduvayal K.V.M. through Muna Vina. Vina stands for Visvanathan Chettyar, the proprietor of the E.M. concern ; Muna stands for his son Muthappa Chettyar ; while K denotes Kadaing Meya Kwin in which their paddy lands are situated. This loan, according to the accounts of O.R.M., was repaid with interest of Rs. 753-8-6 to the appellant-concern at Moulmein on the 13th February 1927. The agent of the appellant-concern admitted collecting this loan himself, but there was no record of it in the accounts produced before the Income-tax Officer. Sixthly, from a report received from the Income-tax Officer, Karaikudi, it appeared that the head-quarters' accounts of the appellant-concern contained two interest payments of Rs. 8,569-7-6 and Rs. 1,104 made during the accounting year Rakthakshi (1924-25) to the appellant-concern at Moulmein. But in the accounts of the latter produced at Moulmein only the first item of interest was recorded. Seventhly, loans were admittedly advanced, under the vilasams K.V.M. and N.V.M., from the proceeds of the paddy lands in the Thatôn District owned by the proprietors of the appellant-concern. The initials V. and M., as shown above, stand for the proprietor Visvanathan Chettyar and his son Muthappa Chettyar. The prefixes K. and N. undoubtedly denote Kadaing Meya and Nallichan, the kwins in which the lands are situated. The transactions connected with these loans were made through the agency of the appellant-concern at Moulmein. Yet there was no record of these transactions in the accounts of the appellant-concern produced before the Department. All the above facts constituted grounds for believing that the accounts of the new agency of the appellant-cocern which were produced before the Department did not fully cover all the transactions carried on by the appellant-concern during the accounting year Rakthakshi (1924-25) and that other accounts must have been maintained in addition to those accounts."

(*e*) The Assistant Commissioner in order to test the accounts on which the assessment was based accordingly issued a notice to the petitioners for the production of the following accounts :—

(1) All the new Agency accounts commencing from the 24th April 1924.

(2) All the old Agency accounts (*i.e.* the accounts of the agency prior to the new agency).

(3) All the accounts showing the transactions with the C.R.M.S. concern, Rangoon, for the year Rakthakshi 1924-25.

(4) All the accounts showing the investments in paddy lands in the Thatôn District, the produce from them every year since 1923-24 and the investments made in other Chettyar concerns from the sale proceeds of such produce.

(*f*) On the 13th July 1927 the Assistant Commissioner passed an order directing the Income-tax Officer to examine these accounts when produced and report on them.

(*g*) Of these accounts only No. (1) was produced ; No. (2) was said to have been lost at the Rangoon wharf by the person who was bringing it from Madras ; as to Nos. (3) and (4) which, for convenience sake, are called hereafter the R.M.P.R. accounts, it was alleged that the transactions and investments mentioned concerned the family of Visvanathan's deceased brother Periyannan and that the petitioners had nothing to do with them.

(*h*) The Assistant Commissioner gave the petitioners a further hearing on the 28th September 1927 when the petitioners' advocate, their auditor and their Moulmein agent were present. The agent said that he hoped to be able to recover the accounts that had been lost if he were given two months' time ; he also agreed to produce the other accounts called for, *i.e.* the R.M.P.R. accounts Nos. (3) and (4) above and in addition all the headquarter accounts kept at Puduvayal. A notice was accodingly issued to the agent for the production of accounts Nos. (1) and (2) and the headquarters accounts ; and at the request of the agent a separate notice was issued to R.M.P.R. Sivagami Achi for the production of accounts Nos. (3) and (4). Five sets of accounts in all were therefore called for.

(*i*) On the 10th December 1927 the next hearing took place and on that date the petitioners produced only the new agency accounts [No. (1) above] which they had produced on the previous occasion.

(*j*) On the 15th December 1927 the Assistant Commissioner sent to the advocate of the petitioners a note specifying the points which the petitioners were required to explain. A copy of this note is attached and marked A.

(*k*) On the 23rd December 1927 there was a further hearing and on the 3rd January 1928 the Assistant Commissioner called on the petitioners to show cause why the assessment should not be enhanced. On the 14th March 1928 the Assistant Commissioner came to the finding that the petitioners had maintained two sets of accounts for the accounting year but produced only one set before the Income-tax Department and that therefore the assessment made by the Income-tax Officer on the incomplete accounts was inadequate. He accordingly passed orders enhancing the assessment under the head "Burma business" from Rs. 78,413 to Rs. 2,00,000, which was an estimate of the petitioners' income at Moulmein to the best of his knowledge and belief. Copy of his order is attached and marked B.

(*l*) Against this enhancement the petitioners appealed under section 32 of the Act to the Commissioner. During the course of the proceedings before him the Commissioner refused to admit the R.M.P.R. accounts in evidence at that stage. The Commissioner confirmed the enhancement made by the Assistant Commissioner. A copy of his order is attached and marked C.

3. The five questions which I am asked to refer are as follows. I arrange them for convenience in a different order from that in which they are stated by the petitioners. The petitioners originally asked me to refer some fourteen questions, but after discussion and correspondence with their advocates they have agreed that the five questions now referred cover all the points in issue.

Question 1. "Whether there was evidence on which the Assistant Commissioner and the Commissioner could find that the books of account on which the assessment of the Income-tax Officer was based were not the full and complete accounts of the petitioners' business for the year."

Question 2. "Whether in these assessment proceedings the Income-tax authorities were entitled to insist on the production in Burma of the petitioners' accounts which were maintained in Puduvayal."

Question 3. "Whether the Commissioner erred in law in refusing to admit the R.M.P.R. accounts at the hearing of the appeal before him."

Question 4. "Whether the enhancement of the petitioner's income under the head 'Burma business' made by the Assistant Commissioner was such an enhancement as is contemplated by section 31 of the Income-tax Act, 1922, and in accordance with the provisions of that section."

Question 5. "Whether even assuming that the petitioners wilfully failed to produce the accounts, the Assistant Commissioner acted illegally in enhancing the assessment in respect of their Burma business to two lakhs of rupees without disclosing to them the materials he had before him in support of such assessment, so as to give them an opportunity to rebut or disprove such materials."

4. As to the first question I would submit that it is the Assistant Commissioner's finding only which is in issue since all that the Commissioner did was to uphold it on appeal. The only evidence to be considered therefore is the evidence before the Assistant Commissioner with the exception of certain affidavits filed before the Commissioner.

The evidence on which the finding is based is set out and examined at length in the orders of the Assistant Commissioner and of the Commissioner copies of which are attached and marked B and C. I need only therefore state it as briefly as possible here. The first point is the reluctance of the petitioners to produce the accounts called for. The old agency accounts were first said to have been lost and later the petitioners' agent said he hoped to recover them. Their loss was not reported to the Police or to the shipping or wharf authorities and there is no evidence of any attempt to recover them. In the circumstances it was reasonable to conclude that they were not lost at all. The R.M.P.R. accounts, if they existed as separate accounts, were admittedly under the control of E.M. Visvanathan's son Muthappa and could have been produced if the petitioners wished to produce them. Their refusal to do so strengthens the inference that the Moulmein accounts shown to the Income-tax Officer were not the true and complete accounts of the business. The refusal to produce the headquarters accounts which the agent agreed to obtain was persisted in up to the last moment until it was too late to produce them. This again strengthens the inference against the accounts on which the assessment was based.

The great decrease in the amount of outstanding loans and the entries in the new agency accounts relating to Lotiah, Lonsdale and Pippidi are explained by the petitioners by alleging that there was a partition between E.M. Visvanathan and his son on the one hand and the widow of his brother

Periyannan on the other and that she has now a separate estate called R.M.P.R. This is such a convenient way of explaining transactions which *primâ facie* ought to appear in the E.M. accounts but do not (by saying that such transactions relate to the R.M.P.R. estate) that it is naturally open to the greatest suspicion. The first mention of this partition in the proceedings occurs in the agent's petition of the 26th August 1927 in which he states that the family was divided in the life-time of Periyannan Chettyar, who died in March 1920. That petition was not submitted until after the petitioners knew that their accounts were under suspicion. But in an affidavit filed subsequently before the Commissioner E.M. Visvanathan states that the partition took place in August 1923 and that it was due to differences between himself and his brother Periyannan Chettyar's widow. This discrepancy is difficult to understand since the agent had been in the employ of the petitioners for about 15 years and would naturally know when a partition had taken place; and the statement was not made at random since it was made in writing and was supplemented by the oral statement that previous to July 1924 there were no separate accounts since transactions of R.M.P.R. were too few to require accounts. He also admits that prior to the accounting year the capital alleged to be R.M.P.R. capital stood in the name of M.R.M.V., *i.e.* Visvanathan and his son. The agent also states that the partition was not reduced to writing whereas E.M. Visvanathan states that it was reduced to writing. An attempt was made by the petitioners to have the R.M.P.R. estate assessed separately at Karaikudi when they came to know that the accounts produced in Burma were suspect, but the Income-tax Officer there, after investigating the facts, came to the conclusion that there was no partition. This finding is, I submit, an important piece of evidence as it was elicited by the petitioners' attempt to get a separate assessment at Karaikudi.

The agent's first explanation of the manipulation of Lotiah's account was that it was not taken over by the new agency as it was not considered good. Subsequently an entirely different explanation was given, *viz.* that Lotiah's transactions were with the R.M.P.R. and when the debt became doubtful it was transferred to E.M. as it would not look well if R.M.P.R. suffered loss on transactions with Lotiah who was vouched for by E.M. As to why the corresponding credit was made to the account of Pippidi it was explained that Pippidi was looking after the business of R.M.P.R. and the credit was therefore made in his name. Now Pippidi is a man of straw who has admitted that he is supported by his father and that he had no dealings with the E.M. firm since 1923. Yet the agent stated in May 1927 that two sums in cash of Rs. 2,000 and Rs. 2,800 had been taken from Pippidi in 1925. Finally, it was admitted by the petitioners' advocate before the Commissioner that the Pippidi account was a purely fictitious account invented with the object of concealing from the Income-tax authorities the existence of the R.M.P.R. estate. In regard to Lonsdale's transactions too it is perfectly clear that the petitioners' agent has not been telling the truth. Up to the final hearing of the appeal before the Assistant Commissioner he could or rather would give no explanation of this account other than that it possibly had some connection with Pippidi. Only at the final hearing was it clearly stated that Lonsdale's transactions were to be found in the R.M.P.R. accounts. The whole explanation as to the manipulation of these accounts being due to the partition between E.M. and R.M.P.R. is too improbable to be taken seriously. On the petitioners' own showing they have been making fictitious entries in their accounts with the object of concealing information from the Income-tax authorities. This affords another reason, if one were wanted, for viewing their accounts with the gravest suspicion and putting them to strict proof that these accounts are the true and complete accounts of their business.

The omission of the loan to O.R.M. firm, Theinzeik, from the petitioners' accounts is explained by saying that it also is an R.M.P.R. transaction. But this explanation does not get over the fact that the loan was made in the names of E.M. Visvanathan Chettyar and his son Muthappa and was repaid to the E.M. firm (petitioners), Moulmein.

It will, I think, be admitted that, in view of the irregular and most unusal entries in and omissions from the accounts which were before the Income-tax Officer and the failure to produce the accounts called for by the Assistant

Commissioner, the appellants were bound, if they wanted the Assistant Commissioner to accept their accounts as the basis of his decision on the appeal, to prove the partition which was the foundation of their whole case. But the only evidence for the partition—if it can be called evidence in the circumstances—put before the Assistant Commissioner was the statement of the petitioners unsupported by any corroboration whatever. They cannot complain of lack of time or opportunity since from first to last the appeal proceedings before the Assistant Commissioner lasted nearly two years. And yet it was not until the case came before the Commissioner on appeal that the petitioners produced affidavits in support of the partition and offered to produce the R.M.P.R. accounts. Meanwhile the petitioners had steadily refused to produce before the Assistant Commissioner the evidence which he wanted, *viz.* the various sets of accounts already set forth, and had produced no evidence whatever except their own statement in support of their fundamental contention that there was a partition. I submit that, in the circumstances and on the facts, the only conclusion which the Assistant Commissioner could have come to or at least the obvious conclusion was that the accounts which were before the Income-tax Officer were not the true and complete accounts of the petitioners' business at Moulmein for the accounting year.

That was the position when the Assistant Commissioner enhanced the assessment and, subject of course to the contrary view being held by the Hon'ble Judges on Question 3, I maintain that that is the position on which this question should be decided. The petitioners had every opportunity to put their case before the Assistant Commissioner and since they refused to support their mere statement by any corroborative evidence I submit that the evidence offered by them subsequently before the Commissioner should be ignored.

On this question therefore I submit that there was evidence on which the Assistant Commissioner could find that the accounts before the Income-tax Officer were not the true and complete accounts of the petitioners' Moulmein business for the accounting year and that the Commissioner was justified in upholding that finding.

5. On the second question it was contended on behalf of the petitioners that the Assistant Commissioner was not entitled to insist on the production in Burma of the accounts kept at Puduvayal ; but that he should have had them examined by the Income-tax authorities of that District. In their petition of appeal the petitioners did not go so far as to say that the Assistant Commissioner acted illegally in insisting on the production of these accounts. All that they said was that he acted irregularly and unjustly. I submit however that the only point for consideration in regard to this question is whether the Assistant Commissioner had the power to call for these accounts. Whether he should have studied the convenience of the petitioners is another matter and certainly not a question of law arising out of the proceedings. The Assistant Commissioner's powers in this respect are conferred by section 37 and that section imposes no such limitation as is contended for by the petitioners. In my opinion therefore the answer to this question is 'Yes.'

6. My opinion on the third question is that the Commissioner did not err in law in refusing to admit these accounts on appeal. The Commissioner was acting under section 32 which, so far as the appellant's opportunity of putting his case is concerned, prescribes only that the Commissioner should give the appellant an opportunity of being heard. To say that this includes the obligation to admit any fresh evidence that the appellant cares to put in is to strain the meaning of the words which are plain and clear ; and on the particular facts of this case such an interpretation would be manifestly absurd since the petitioners had every opportunity of producing these accounts before the Assistant Commissioner and did not do so. I submit that in Income-tax proceedings the law gives the appellant no more right to put in fresh evidence on appeal than is given to an appellant in a Civil appeal by Order 41, Rule 27, of the Civil Procedure Code.

7. As to the fourth question the petitioners contended that the enhancement by the Assistant Commissioner is illegal on two grounds :—

(*a*) that section 31 gives the Assistant Commissioner no power to ignore the materials which were accepted and acted upon by the Income-tax Officer and to make a summary assessment which is a mere estimate,

(*b*) that section 31 gives the Assistant Commissioner no power to assess income which according to him was not included in and not covered by the assessment appealed against.

Section 31 lays down no conditions precedent to an order of enhancement. There is nothing whatever in the section which would indicate that the enhancement must be based on the materials before the Income-tax Officer. On the contrary, sub-section (2) which provides for a further enquiry negatives this view. Nor is there anything in section 31 which prevents the Assistant Commissioner from making an enhancement which is only an estimate. If the evidence produced by the appellant is held to be false or incomplete and he is unwilling to state the full facts as to his income, I submit that the only course open to the Assistant Commissioner is to make an estimate to the best of his judgment.

The second argument on this question is in my opinion equally fallacious. If this argument were correct it would not be possible to make an enhancement under section 31 in any case. For what the Assistant Commissioner has done in this case is to enhance the income of the Moulmein business and not to bring under assessment a new source of income or income from a new business the existence of which was not known to the Income-tax Officer at the time of making the assessment.

On this question therefore I am of opinion that the enhancement was such an enhancement as is contemplated by section 31 of the Income-tax Act and in accordance with the provisions of that section.

8. On the fifth question the petitioners maintain that before the enhancement was made the Assistant Commissioner was bound in law to disclose to them the materials on which he came to the conclusion that their income from Burma business was Rs. 2,00,000 and not Rs. 78,413 as determined by the Income-tax Officer from the petitioners' accounts. I fail to understand how this question is raised in view of the many opportunities which the petitioners had of producing all relevant accounts before the Assistant Commissioner and satisfying him that the set of accounts produced before the Income-tax Officer were the true and complete accounts of their business. Moreover, the particular points which led the Assistant Commissioner to believe that the petitioners had withheld their true accounts from the Income-tax Officer were clearly put to the petitioners before the enhancement was made and yet they still failed or refused to produce the accounts called for or any other evidence whatever which would have satisfied him that his belief was not justified. In the circumstances, the only course open to the Assistant Commissioner was to make an estimate of the petitioners' income from their business and I submit that the estimate made by him cannot be impugned. On this question therefore my opinion is that the Assistant Commissioner did not act illegally.

RANGOON,
Dated the 17th April 1929.

J. F. SHEEHY,
Commissioner of Income-tax, Burma.

Exhibit A.

Note by the Assistant Commissioner of Income-tax, dated the 15th December 1927, to E. FOUCAR, Esq., *Barrister-at-Law*, c/o Messrs. Keith and Young.

In accordance with your suggestion made at your previous appearance before me in the case of E.M. Visvanathan Chettyar, Moulmein, I send you the following note regarding matters which require explanation :—

Appeal against 1925-26 *Assessment.*

I. (1) By my order, dated the 13th July 1927, I sent the proceedings to the Income-tax Officer, Moulmein, for a further examination of the accounts of this firm and in particular for an examination of the following accounts ;—

(*a*) Old agency ; (*b*) new agency ; (*c*) accounts showing transactions with C.R.M.S., Rangoon and (*d*) accounts relating to the investment of funds derived from paddy lands in Thatôn District.

(2) The Moulmein agent failed to produce accounts (*a*), (*c*) and (*d*) before the Income-tax Officer. The old agency accounts (*a*) were said to have been lost at the wharf in Rangoon on being brought over from Madras.

(3) The agent and his advocate appeared before me at Moulmein on the 28th September 1927 and stated that he hoped to be able to recover these old agency accounts ; they promised to produce also the accounts noted as (*c*) and (*d*) above, as well as the Headquarter Accounts.

(4) When the case came on again for hearing on the 10th December 1927, the only accounts produced were the new agency accounts (*b*).

(5) This reluctance to produce accounts requires explanation. As the assessment is made in Burma, I am entitled to see all the assessee's accounts. Further, the Income-tax Officer, Karaikudi, reports that there has been no regular and valid partition of the family property and hence the withholding of accounts (*c*) and (*d*) requires explanation. In addition the reasons for thinking that the old agency accounts might be recovered require to be stated.

II. (1) The amount outstanding with customers in the Moulmein business on the 12th April 1925 was less by over Rs. 3,85,000 than the amount outstanding on the 12th April 1924. This amount appears to correspond roughly with capital sums (surplus capital) under the headings " M.R.M.V." and " Land Purchase Account" on which interest of about Rs. 22,000 was paid for the year ending the 12th April 1924 but on which only Rs. 1,400 was paid for the year ending the 12th April 1925. The old agency accounts were required in order to find out what has become of this surplus capital and why the business shrunk so much from one year to the other. An explanation on this point should be furnished now.

(2) G. M. Lotiah's account—debit of Rs. 1,34,500. An explanation is required as to why this debit was not at once entered in the new agency accounts and why the corresponding credit was made to the account " Ahmad Ajam Pippidi " instead of in the " Old Account " folio of the new agency accounts.

(3) Mr. Lonsdale's account—An explanation is required as to why the transactions with this man have been entered in the account " Ahmad Ajam Pippidi." Receipts produced by Mr. Lonsdale show that his transactions were with the concern E.M. not with Ahmad Ajam Pippidi.

III. An explanation is required as to why a loan of Rs. 5,000 borrowed by O.R.M. firm, Theinzeik on the 17th September 1924 from Moulmein E.M. concern under the name of Puduvayal K.V.M. through Muna Vina was not entered in the assessee's Moulmein accounts. Vina Muna (V.M.) appears to stand for Visvanathan Chettyar and his son Muthappa Chettyar and (K) appears to stand for Kadaing Meya Kwin in Thatôn District in which the paddy lands are situated.

IV. The Headquarter's account according to the Income-tax Officer, Karaikudi, showed two interest payments—(*a*) Rs. 8,569-5-6 ; and (*b*) Rs. 1,104 during 1924-25 to the Moulmein concern. An explanation is required as to why only item (*a*) is traceable in the accounts.

V. The position as to the ownership of the paddy lands in Thatôn requires explanation. (*a*) There is the statement of the Income-tax Officer, Karaikudi, that there has been no valid partition ; (*b*) the initials (K) V.M. and (N) V.M. under which loans have been advanced from the proceeds of the paddy lands appear to represent the assessee and his son ; (*c*) the Moulmein agent who has been the assessee's employee in Moulmein for 15 years has sworn before the Income-tax Officer that his employers owned the paddy lands ; (*d*) a withdrawal made by Visvanathan Chettyar on the 7th August 1924 has been debited to Nallichan Land Account and (*e*) the loan to the O.R.M. firm, Theinzeik, appears to have been made by the orders of Visvanathan Chettyar.

All these points require explanation before the specific grounds of appeal can be dealt with. Both the genuineness of the accounts on which the assessment was based and their completeness (*i.e.*, whether all relevant accounts were produced) are in question and until that issue is disposed of, there is no object in discussing the specific grounds of appeal,

G.B.C.P.O.,—No. 10, C. of I. Tax., 6-4-29,—50

B

EXHIBIT "A"

IN THE OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME-TAX, EASTERN RANGE.

Date of order—The 14th March 1928.

INCOME-TAX APPEAL No. 11 OF 1927-28.

Instituted on the 17th April 1926 from the order of the Income-Tax Officer of Amherst District, Moulmein.

E. M. CHETTYAR CONCERN, 4th Division, Moulmein—*Appellant.*

Date of hearing.—11th January 1928 and previous dates.

Present for appellant—Mr. Foucar, *Barrister-at-Law* and Mr. Ganeshier, Public Auditor.

READ :—(1) Assessment Proceedings of 1925-26 and previous proceedings.

(2) Letter, dated the 9th February 1928, from Messrs. Keith, Young and Foucar, Advocates.

Appellate Order and Grounds of Decision.

This is an appeal by the E.M. Chettyar concern of Moulmein against their assessment to income-tax for the year 1925-26 on a total income of Rs. 1,00,386, of which the taxable income from the business in Burma was Rs. 78,413. The appeal was filed on the 17th April 1926. My predecessor (Mr. Kuppuswamy Ayyar) heard it at Moulmein on the 25th June 1926 and on the 26th and 28th June he examined the accounts of the appellant-concern and recorded the sworn statements of the local agent on certain points. On the 21st August 1926 he remanded the case to the Income-tax Officer, Moulmein, for further enquiry. On completion of this enquiry the Income-tax Officer submitted a report on the 20th May 1927. This enquiry showed that there was strong reason to believe that the appellant-concern were defrauding Government of its just dues by keeping two sets of accounts of which only one was produced before the Income-tax Officer for the purpose of assessment. On the 24th June 1927 my predecessor (Mr. Sheehy) proceeded to dispose of the appeal and to that end issued a notice to the appellant-concern calling upon them to produce four sets of accounts at the Income-tax Office at Moulmein, on the 27th July 1927. On the 13th July he issued an interim order to the Income-tax Officer directing him to examine the accounts produced and report the result. The appellant-concern produced only one of the four sets of accounts called for, *viz.* the accounts of the new agency. On the 16th August they submitted a petition alleging that the accounts of the old agency, which were also called for and were of the utmost importance in regard to the matters in question, were lost on the way back from Madras. They also stated in the same petition that the other two sets of accounts which were called for belonged to the RM.PR. estate and had nothing to do with the E.M. concern. On the 20th September the Income-tax Officer, Moulmein, reported that the local agent of the appellant-concern had failed to produce three of the four sets of accounts which he was directed to produce for examination. On the 24th September a notice was issued to the agent for his appearance on the 28th September. On that date the agent appeared with an Indian Advocate and an Indian Auditor and stated that he hoped to be able to recover the old agency accounts that were said to have been lost and to produce them in two months' time. He also agreed to produce the Puduvayal (headquarters) accounts as well as the other two sets of accounts which were previously called for. But as regards the latter accounts he asked that a separate notice should be issued in the name of RM.PR. for their production. Time was accordingly granted till the 7th December for the production of all these accounts and a separate notice was, as desired, issued to RM.PR. in respect of the two sets of accounts with which they were said to be concerned. On the 5th December a European firm of lawyers whom the appellant-concern had meanwhile engaged to represent them wrote asking for an adjournment. An adjournment was granted accordingly till the 10th December. On that date a representative of the said firm of lawyers appeared and produced only the new agency accounts which had been produced before. At his request a written note was furnished to him on the 15th December detailing the several points which required explanation and a hearing was given on those points on the 23rd December. Finally, on the 3rd January 1928, a notice was issued to the appellant-concern through their legal representatives calling upon them to show cause why the assessment should not be enhanced. On the 11th January the appellant-concern's representatives were heard on the subject of the proposed enhancement and on the 11th February a letter was received from them in the same connection. Having described the various steps taken in connection with this appeal I shall now set out in greater detail the facts which go to show that there are grounds for holding that the accounts on which the assessment

under reference was based were not the full and complete accounts of the appellant-concern's transactions for the accounting year 1924-25 and then proceed to dispose of the appeal.

2. The facts just referred to are as follows. The balance sheet filed by the appellant-concern in connection with the assessment which is the subject of the present appeal showed that the amount of loans outstanding with their customers was Rs. 6,01,569 at the end of Rakthakshi (1924-25), whereas the balance sheet filed in connection with the previous year's assessment showed the amount outstanding at the end of Rudhirothkari (1923-24) as Rs. 9,87,266. There was thus a decrease of over Rs. 3,85,000 in the amount of loans advanced to customers. In the absence of evidence to show that there had been a marked diminution in the business of the appellant-concern this abnormal decrease in the volume of their transaction was extremely suspicious. From a comparison of the details of interest payments for the two years it appeared that a payment of about Rs. 22,000 (Rs. 17,730-7-0 and Rs. 4,214-7-6 respectively) was made under the headings M.R.M.V. and " Land Purchase Account " in the year Rudhirothkari, whereas in the year Rakthakshi the payment made on the first account was Rs. 1,427-4-6 only. In other words the capital subscribed by M.R.M.V. had shrunk from over Rs. 2 lakhs in Rudhirothkari to about Rs. 14,000 only in Rakthakshi. As M.R.M.V. are initials denoting various members of the appellant-concern's family an explanation was obviously required of this extraordinary reduction in their capital as shown in the accounts produced. Secondly, there were loans aggregating Rs. 1,34,500 outstanding against one G. M. Lotiah. This amount was transferred to the accounts of the new agency produced before the department. But the transfer was not effected in a manner which is ordinarily employed. The usual method of recording such a transfer would have been to make a debit entry against Lotiah with a corresponding credit entry in the folio " Old Account " in the new agency books. But what the appellant-concern did was to make the credit entry in the account of Ahmed Ajam Pippidi instead of in the " Old Account " folio. Thirdly, in the Pippidi account itself the transfer from the old agency to the new agency was effected by three separate transactions on three different dates instead of by a single transaction, which is the usual method. Fourthly, certain transactions with one Mr. Lonsdale were also shown in the account of Ahmed Ajam Pippidi instead of in his own account. According to the new agency accounts produced the transactions with Mr. Lonsdale were of recent date and the agent alleged that the appellant-concern had had no previous transactions with this gentleman. Documents found in Mr. Lonsdale's possession, however, proved that he had been dealing with the appellant-concern for many years previously. Among these documents were two receipts, for Rs. 3,000 and Rs. 2,000 respectively, granted by the agent and by the proprietor's son. The particular transactions to which these receipts related did not find a place in the accounts produced. These receipts moreover proved that Mr. Lonsdale's dealings were with the appellant-concern and not with Ahmed Ajam Pippidi. The above facts showed that the Ahmed Ajam Pippidi account was probably a fictitious account. Fifthly, the accounts of the O.R.M. firm at Theinzeik in the Thatôn District showed that on the 17th September 1924 a sum of Rs. 5,000 was borrowed from the appellant-concern at Moulmein. The pro-note was executed not in the name of E.M. but in the name of Puduvayal K.V.M. through Muna Vina. Vina stands for Visvanathan Chettyar, the proprietor of the E.M. concern ; Muna stands for his son Muthappa Chettyar ; while K denotes Kadaing Meya Kwin in which their paddy lands are situated. This loan, according to the accounts of O.R.M., was repaid with interest of Rs. 753-8-6 to the appellant-concern at Moulmein on the 13th February 1927. The agent of the appellant-concern admitted collecting this loan himself, but there was no record of it in the accounts produced before the Income-tax Officer. Sixthly, from a report received from the Income-tax Officer, Karaikudi, it appeared that the headquarters' accounts of the appellant-concern contained two interest payments of Rs. 8,569-7-6 and Rs. 1,104 made during the accounting year Rakthakshi (1924-25) to the appellant-concern at Moulmein. But in the accounts of the latter produced at Moulmein only the first item of interest was recorded. Seventhly, loans were admittedly advanced, under the vilasams K.V.M. and N.V.M., from the proceeds of the paddy lands in the Thatôn District owned by the proprietors of the appellant-concern. The initials V. & M., as shown above, stand for the proprietor Visvanathan Chettyar and his son Muthappa Chettyar. The prefixes K. & N. undoubtedly denote Kadaing Meya and Nallichan, the kwins in which the lands are situated. The transactions connected with these loans were made through the agency of the appellant-concern at Moulmein. Yet there was no record of these transactions in the accounts of the appellant-concern produced before the department. All the above facts constituted grounds for believing that the accounts of the new agency of the appellant-concern which were produced before the department did not fully cover all the transactions carried on by the appellant-concern during the accounting year Rakthakshi (1924-25) and that other accounts must have been maintained in addition to those accounts. The correctness or otherwise of this assumption could only be proved by the production of the old agency accounts and the two other sets of accounts referred to in paragraph 1 of this order and it was for that purpose that those accounts were called for.

3. As stated in paragraph 1 above, all the accounts that were called for were withheld with the exception only of the new agency accounts. The appellant-concern therefore deprived themselves of the only satisfactory means available of disproving the inference which the facts set out in paragraph 2 above raises against them. The reasons which they advanced for the non-production of the accounts in question will not bear examination. They alleged

that the accounts of the old agency, which had been taken away to Madras, were sent back to Burma for production before the authorities here but that they were lost on the wharf at Rangoon. This allegation is clearly false. The accounts were said to have been sent to Burma in the charge of one Lakshmanan Chettyar, agent of another Chettyar firm at Moulmein. It is in the first place quite inconceivable that accounts of so grave moment to the appellant-concern would be entrusted to the agent of another firm. In the second place it does not appear that any steps were taken to recover the lost account-books. Indeed, the loss does not appear to have even been reported either to the Police or to the Agent of the B.I.S.N.Co. at Rangoon. It is quite incredible that the appellant-concern would have accepted with such complacency the loss of account books which were of the utmost importance to them. Finally the statement subsequently—made that the appellant-concern hoped to recover the lost books and produce them in two months' time gives the lie to the allegation that the books were lost. If the books were really lost and no steps were taken to recover them it was not possible that they could be recovered and produced two months later. The fact of the matter, I think, is that, at the time when this statement was made, the appellant-concern came round to the view that it would perhaps be better after all to produce the accounts of the old agency. With regard to the other two sets of accounts which were also withheld, the explanation given for their non-production was that those accounts related to the RM.PR. estate and had nothing to do with the appellant-concern E.M. But the fact of the matter is that the RM.PR. estate and the E.M. concern are one and the same. The Income-tax Officer at Karaikudi has reported that there has been no proved partition between E.M. and RM.PR. If there has in fact been a partition, such partition could easily be proved by the accounts relating to RM.PR. and the non-production of those accounts only confirms the report of the Income-tax Officer, Karaikudi, that there has been no real partition. The proprietor of the appellant-concern Visvanathan Chettyar and his son admittedly managed the alleged separate RM.PR. estate and as the account books of that estate are necessarily under their control, there is no good reason whatever why they should refuse to produce those accounts. The headquarters accounts of E.M. were also not produced though called for. At first the proprietor of the appellant-concern refused to produce them on the ground that he did not wish his agent at Moulmein to know their contents (a lame excuse , but at the last hearing of the appeal his representative stated that the accounts could be produced when the Income-tax Officer, Karaikudi, had done with them. The accounts, however, have not been produced up to date.

4. Instead of producing all the accounts called for and so settling once and for all the question whether are not the accounts of the new agency which were produced before the Income-tax Officer contained the sum total of the transactions in which the appellant-concern at Moulmein were engaged during the accounting year Rakthakshi (1924-25), the appellant-concern have endeavoured to explain away the facts appearing against them as set out in paragraph 2 of this order. Their contention in a nutshell is that there are two separate estates E.M. and RM.PR. and whenever there is a transaction which appears to be a transaction of E.M. they allege that it refers to the RM.PR. estate. It is impossible for me to place any credence in such contentions when the whole question could be easily settled by the production of the accounts. The appellant-concern have a very strong motive for withholding the accounts of the old agency and the other accounts called for. They fear that, if these accounts are produced, the frauds perpetrated by them will be detected and penal consequences will ensue. There is to my mind no doubt whatever that the old agency accounts are still in the possession of the appellant-concern. No satisfactory reason has been vouchsafed for the non-production of those accounts as well as the other accounts called for. I am therefore constrained to hold that the inferences arising out of the facts detailed in paragraph 2 above are correct and that the appellant-concern maintained two sets of accounts in the accounting year Rakthakshi (1924-25) but produced only one set before the Income-tax Department for the purpose of the assessment for 1925-26 which is the subject of this appeal. It follows from this that the assessment based on the incomplete accounts produced was inadequate. It also follows that there is no need to examine the several points on which that inadequate assessment is contested in the appeal. To the best of my information and belief the net taxable income of the appellant-concern's business at Moulmein during the accounting year Rakthakshi (1924-25) was not less than two lakhs of rupees. It is highly improbable that any assessee, and least of all an astute Chettyar money-lender, would go to the length of maintaining a double set of accounts and concealing part of his income unless the stakes were worth the hazard. Under section 31 (3) (*a*), therefore, I enhance the assessment under the head " Burma Business " from Rs. 78,413 to Rs. 2,00,000. The result of this enhancement is set out below :—

			Rs.	A.	P.
Business—					
Burma (taxable income)			2,00,000	0	0
Deduct loss from Puduvayal business			7,112	0	0
			1,92,888	0	0
Property—					
Moulmein (net)	Rs. 614				
Puduvayal „	„ 400				
	1,014		1,014	0	0
Total taxable income ...			1,93,902	0	0

			Rs.	A.	P.
Add—					
Share income in R.M.P., Gyobingauk			27,539	0	0
Income from dividends			532	0	0
			28,071	0	0
	Total income		2,21,973	0	0
Income-tax on Rs. 1,93,902 at 18 pies in the rupee			18,178	5	0
Super-tax—					
Total income	Rs. 2,21,973				
Less statutory allowance	„ 75,000				
Income to be taxed	1,46,973				
Super-tax on Rs. 25,000 at 12 pies			1,562	8	0
Super-tax on Rs. 50,000 at 18 pies			4,687	8	0
Super-tax on Rs. 50,000 at 2 annas			6,250	0	0
Super-tax on Rs. 21,973 at 2½ annas			3,433	5	0
			15,933	5	0
Total tax due			34,111	10	0
Deduct tax already paid			9,045	0	0
	Balance payable		25,066	10	0

The Income-tax Officer, Moulmein, is directed to issue a Notice of Demand for this amount payable by the 27th March 1928.

W. R. WALL,
Assistant Commissioner of Income-tax, Eastern Range.

EXHIBIT "C"

IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX, BURMA.

Date of Order—1st October 1928.

INCOME-TAX APPEAL No. 10 of 1928-29.

Instituted on the 16th April 1928 from the order of the Assistant Commissioner of Income-tax, Eastern Range.

E.M. CHETTYAR CONCERN, Moulmein—*Appellant.*

Date of hearing—9th and 10th August 1928.

Present for appellant—Mr. M. Patanjali Sastri, Vakil, Madras High Court.

Order.

The E.M. Chettyar concern of Moulmein were assessed to income-tax for the year 1925-26 on a total income of Rs. 1,00,386 of which the taxable income from the business in Burma was Rs. 78,413. The assessment was made by the Income-tax Officer, Amherst District, Moulmein, on the 17th March 1926 under the provisions of section 23 (3) of the Indian Income-tax Act (XI of 1922) and notices of demand for income-tax and super-tax amounting to Rs. 7,446-5-0 and Rs. 1,598-11-0 respectively, or Rs. 9,045 in all, were issued by him on the same day. Against this assessment the E.M. concern appealed to the Assistant Commissioner of Income-tax, Southern Range (now Eastern Range), on the 17th April 1926. The Assistant Commissioner heard the appeal on various dates, examined certain accounts produced before him and recorded the sworn statements of the local agent on certain points. On the 21st August 1926 he remanded the case to the Income-tax Officer for further inquiry under section 31 (2) of the Act. The inquiry was protracted and the Income-tax Officer completed it and submitted his report only the 20th May 1927. The Assistant Commissioner then proceeded to dispose of the appeal and to that end issued several notices to the E.M. concern. Further hearings were given and finally on the 14th March 1928 the Assistant Commissioner passed an order enhancing the assessment under the head "Burma business" from Rs. 78,413 to Rs. 2,00,000. The result of this enhancement was that the total income for assessment was raised to Rs. 2,21,973 and the taxable income to Rs. 1,93,902 and that the E.M. concern were called upon to pay a further amount of Rs. 25,066-10-0 in the shape of income-tax and super-tax. This order of the Assistant Commissioner was passed under section 31 (3) (*a*). The E.M. concern have now preferred an appeal against that order to me under section 32 (1). They have headed their petition as an application under sections 32 and 33, but as it is essentially an appeal against the Assistant Commissioner's order I am dealing with it under the former section alone. I have heard Mr. Patanjali Sastri, Vakil of the Madras Bar, in support of the appeal.

2. In the course of the appellate proceedings the Assistant Commissioner issued to the appellant-concern notices requiring the production of certain specified accounts. Some of these accounts were withheld by the appellant-concern and the Assistant Commissioner, in the absence of sufficient evidence which would have enabled him to compute the taxable income with exactitude, was obliged to estimate that income to the best of his ability on such material as was available. The first ground on which his order enhancing the assessment is assailed in the appeal to me is that the Assistant Commissioner's action was irregular, illegal and unwarranted by the provisions of the Act. This contention is made in paragraph 3 of the present petition of appeal and elaborated in paragraphs 4—10. The contention in brief is that the Assistant Commissioner made the assessment summarily and that such an assessment by an Assistant Commissioner is *ultra vires*. The Assistant Commissioner did not make the assessment under section 23 (4), as the appellant-concern seem to think, but he enhanced, under section 31 (3) (*a*), an assessment already made by the Income-tax Officer under section 23 (3). The notices calling for accounts were issued by him under section 37. The Act does not prescribe any procedure to be followed by an Assistant Commissioner in enhancing an assessment under section 31 (3) (*a*). It merely says that, in disposing of an appeal, the Assistant Commissioner may enhance the assessment, though the proviso to the section prescribes that the Assistant Commissioner shall not enhance the assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement. The Assistant Commissioner in the present case gave the appellant-concern notice of his intention to enhance the assessment and afforded them a reasonable opportunity of showing cause against such enhancement. The Assistant Commissioner also did everything in his power to secure the production of all the evidence from which it would have been possible to work out the appellant-concern's taxable income more or less exactly. When that evidence was withheld from him he had no alternative but to estimate the income to the best of his judgment. But that does not mean that he made the assessment under section 23 (4). He could not and

did not make the assessment under that section. Section 31 is the only section which governs an Assistant Commissioner's actions in disposing of an appeal and he clearly acted under that section. In point of fact he concluded his order with the words "Under section 31 (3) (*a*), therefore, I enhance the assessment . . . . . ." If the appellant-concern had produced all the accounts that were called for, the Assistant Commissioner's assessment would no doubt have been based on those accounts and it would then not have had the appearance of being a summary assessment. But it does not follow that, where an assessee does not produce all his accounts, the Assistant Commissioner acting under section 31 (3) (*a*) has not the power to frame an estimate of the assessee's taxable income on such other material as is available to him. Such a proposition is absurd, for an assessee would have only to withhold his accounts to escape a just assessment at the hands of the Assistant Commissioner. Furthermore, when an assessment is made summarily by an Income-tax Officer under section 23 (4) it is not appealable, whereas an enhancement of an assessment by an Assistant Commissioner under section 31 (3) (*a*), whether made in a so-called summary way or otherwise, is appealable to the Commissioner under section 32. From this alone it is clear that the Assistant Commissioner's order in the present case cannot be construed as an order under section 23 (4). I hold therefore that there was nothing irregular, illegal or unwarranted in the Assistant Commissioner's action.

3. It will be convenient to deal now with the additional grounds put forward in the supplementary petition filed by the appellant-concern's Advocate on the 7th August 1928. In these grounds it is contended that under section 31 the Assistant Commissioner had no power to assess income which was not included in, and covered by, the assessment appealed against. It is noteworthy that this contention involves a complete change of front. Whereas in the first ground of appeal, dealt with by me in the preceding paragraph, the appellant-concern argued that the Assistant Commissioner's order enhancing the assessment was tantamount to a summary assessment under section 23 (4) which he had no power to make, they now practically admit that the Assistant Commissioner's order was passed under section 31. The answer to the contention raised is that the Assistant Commissioner did not assess any fresh source of income but merely enhanced the assessment under the head "Burma business" already assessed by the Income-tax Officer. The appellant-concern try to make out that, under colour of enhancing the assessment appealed against, the Assistant Commissioner really assessed income which had escaped assessment and they go on to argue that the scope of the Assistant Commissioner's functions was limited to the subject-matter of the appeal, that he had no power to travel beyond that subject-matter and that the income which had escaped assessment should have been brought under assessment under section 34. Here again the appellant-concern are proceeding on incorrect suppositions. While in a sense it is true that, by having the taxable income under the head "Burma business" fixed by the Income-tax Officer at Rs. 78,413, part of the appellant-concern's income did escape assessment, the argument that such income could only be brought under assessment under the provisions of section 34 is untenable. At the hearing two authorities were cited by Counsel for the appellant-concern in support of the above contention. The first is the ruling of the Patna High Court in the case of Babu Jagarnath Therani *v.* The Commissioner of Income-tax, Bihar and Orissa (2 I.T.C. 4). In that case it was held by the Patna High Court that on an appeal under section 31 the Assistant Commissioner of Income-tax has no power to enhance the assessment by bringing in new sources of income outside the subject-matter of the assessment appealed against and properly assessable by the Income-tax Officer having jurisdction over the same. But the facts of that case are totally different from the facts of the present case. In the former case the assessee, Babu Jagarnath Therani, filed a return under section 22 of the Act showing his income in the district of Purnea only. The Income-tax Officer assessed him on the income in that district and after completing that assessment began to take steps to assess also the assessee's income in Jalpaiguri and Calcutta. Meanwhile, the assessee filed an appeal against the former assessment and the Assistant Commissioner in his order assessed the appellant on his total income in Purnea, Jalpaiguri and Calcutta. The Assistant Commissioner thus assessed the appellant's income from two entirely new sources. In the present case, however, there was only one source of income which was the subject-matter of the appeal, *viz.* the income from the business in Moulmein. The Assistant Commissioner decided that the income from that source assessed by the Income-tax Officer was inadequate and enhanced the income from that source. The Income-tax Officer had fixed the income from "Burma business" (*i.e.* Moulmein business) at Rs. 78,413. In appeal the Assistant Commissioner dealt with that income alone and expressly concluded his appellate order in the following terms :—"I enhance the assessment under the head 'Burma business' from Rs. 78,413 to Rs. 2,00,000." If the Assistant Commissioner had no power to make such an enhancement it is difficult to see in what other way he could make an enhancement at all and the provision in section 31 (3) (*a*) enabling an Assistant Commissioner to enhance the assessment would be meaningless. The very fact that an enhancement of an assessment is necessary presupposes that part of the income had escaped assessment and where that income is from the same source it is absurd to maintain that it cannot be brought under assessment by an Assisstant Commissioner by way of an enhancement of the original assessment under section 31 (3) (*a*) but that it can be assessed by an Income-tax Officer alone under section 34. Such a proposition would render the provisions of the former section entirely nugatory. I therefore hold that there is no substance in the appellant-concern's contention that the Assistant Commissioner's action in this respect was *ultra vires*.

4. The other authority cited by Counsel to support the contention that income which has escaped assessment can only be brought under assessment by an Income-tax Officer acting under section 34 is the ruling of the Madras High Court in the case of Messrs. Shaik Abdul Kadir Maracayar & Co. *v.* the Commissioner of Income-tax, Madras (2 I.T.C. 372). But that case too is quite different from the present case. The facts in that case were as follows. The assessees, hides and skins merchants, were assessed for the year 1923-24 under section 25 (3) of the Act on an income of Rs. 12,058. In the course of the assessment proceedings for the succeeding year 1924-25 the Income-tax Officer found that the assessees had escaped assessment in 1923-24 on an income of Rs. 18,943 from certain sources which were not then disclosed by them. Thereupon in March 1925 the Income-tax Officer proceeded to take action under section 34 by issuing a notice calling upon the assessees for a fresh return of their income for 1922-23 and served this notice on a clerk of the assessees' firm. On the assessees not responding thereto, a re-assessment was made under sections 23 (4) and 34 of the Act and a demand notice of this re-assessment was served. The assessees then unsuccessfully applied to the Income-tax Officer under section 27 of the Act to set aside the re-assessment on the ground of want of proper service of notice under section 34. On appeal the Assistant Commissioner set aside the order of re-assessment on the ground that there had been no valid service of notice for re-assessment. After the expiry of the period for notice laid down in section 34 the Commissioner of Income-tax, purporting to start proceedings under section 33 of the Act, restored the re-assessment. The High Court held that, as the Commissioner did not purport to revise the finding of the Assistant Commissioner as regards the legality of the service of the notice, there was no proper service of notice under section 34 to validate the re-assessment proceedings taken by the Income-tax Officer and the initiation of independent re-assessment proceedings by the Commissioner purporting to act under section 33 was illegal. Here again the income that escaped assessment was income from entirely new sources. The assessment that was made in the first instance was in respect of income from buffalo hides, bull hides and goat hides. The income that escaped assessment was from salted buffalo hides, salted sheep skins, grease, horns, commission and ground rent. It was explicitly stated that this income was from sources other than the sources of income disclosed on the original assessment and in point of fact a penalty was levied on the assessees by the Commissioner under section 28 for concealment of these fresh sources of income. In the present case, however, as I have explained in the previous paragraph, no income escaped assessment in this sense. The enhanced assessment made by the Assistant Commissioner was in respect of income from the same source and indeed from the same money-lending business at Moulmein assessed by the Income-tax Officer whose assessment was merely held to have been inadequate. Moreover, in the case that was referred to the Madras High Court the Commissioner virtually initiated assessment proceedings of his own under section 33, which he had no power to do, whereas in the present case the proceedings taken before the Assistant Commissioner were initiated by the appellant-concern themselves and the assessment made by the Assistant Commissioner was in execution of those proceedings. To my mind, therefore, the second ruling cited by Counsel also has no bearing on the present case.

5. Before reverting to the original petition of appeal and dealing with the grounds and contentions put forward therein it is necessary to set out the facts which gave the Assistant Commissioner grounds for thinking that the assessment made by the Income-tax Officer was inadequate and led him to take steps to enhance the assessment. The assessment under reference was for the year 1925-26. The accounting year with which that assessment was concerned was the Tamil year Rakthakshi ending on the 12th April 1925. From the profit and loss statement for that year filed by the appellant-concern it appeared that the amount of loans outstanding with their customers on the last day of the year was Rs. 6,01,569. But the profit and loss statement for the year Ruthirothkari ending on the 12th April 1924 filed in connection with the assessment for the year 1924-25 showed that the amount outstanding on the last day of that accounting year was Rs. 9,87,266. Further, it appeared that during the accounting year Ruthirothkari the appellant-concern made payments of interest of Rs. 17,730-7-0 and Rs. 4,214-7-6 on the proprietor's investments standing under the vilasam "M.R. M.V." and "Land Purchase Account" respectively, whereas in the accounting year Rakthakshi the amount of interest paid on the first account was found to be Rs. 1,427-4-6 only and there appeared to be no payment at all on the second account. Thus in the accounting year Rakthakshi there was a decrease of over Rs. 3,85,000 in the amount of loans outstanding with non-Chettyar customers as compared with the previous year Ruthirothkari with a more or less corresponding decrease in the proprietor's surplus capital. It was apparent from this that when the assets and liabilities were transferred from the accounts of the old agency to the accounts of the new agency a portion of the loans made to non-Chettyar customers and a corresponding amount of capital of the proprietor were transferred to a separate set of accounts. The new agency succeeded the old agency on the 24th April 1924. But the old agency accounts were continued beyond that date and ran concurrently with the new agency accounts till September 1924. The accounts of the old agency were therefore relevant to the assessment for 1925-26 equally with the accounts of the new agency, quite apart from the fact that they would have thrown light on the real causes of the decrease both in the amount of loans outstanding with non-Chettyar customers and in the amount of the proprietor's capital as shown in the new agency accounts.

Again there were loans aggregating Rs. 1,34,500 outstanding against one G. M. Lotiah. This amount was transferred to the accounts of the new agency. But, instead of making a

debit entry against Lotiah with a corresponding credit entry in the "old account" folio, the transfer was effected by making a credit entry in the account of one Ahmed Ajam Pippidi. In the latter account itself the transfer from the old agency to the new agency was effected by three instalments on three different dates instead of by the usual method of making a single entry.

Then certain transactions with a customer named Lonsdale were also shown in the account of Ahmed Ajam Pippidi. The new agency accounts purported to show that the transactions with Lonsdale dated from October 1926 and the agent, when questioned by the Income-tax Officer, alleged that the appellant-concern had had no dealings with this customer for four years prior to October 1926, that is to say Lonsdale had not dealt with them at any time between October 1922 and October 1926. But documents found in Lonsdale's possession showed that he had been dealing with the appellant-concern regularly and continuously from February 1924. Among those documents were two receipts, one for Rs. 3,000 and the other for Rs. 2,000, granted by the agent and by the proprietor's son on the 24th February 1925 and 2nd March 1925 respectively. The particular transactions to which these receipts related did not find a place in the new agency accounts. These receipts also proved that Lonsdale's dealings were with the appellant-concern and not with Ahmed Ajam Pippidi. It was clear from the above facts that the Pippidi account in the new agency accounts was a fictitious account and that to that extent at least the new agency accounts of the appellant-concern were false.

Moreover, the accounts of the O.R.M. firm at Theinzeik showed that on the 17th September 1924 a sum of Rs. 5,000 was borrowed from the appellant-concern at Moulmein. The pro-note was executed in the name of Puduvayal K.V.M. under the orders of Visvanathan Chettyar. The initials K.V.M. stand for Kadaing Kwin in which the paddy lands are situated, Visvanathan Chettyar, the proprietor of the E.M. concern, and his son Muthappa Chettyar, respectively. According to the accounts of the O.R.M. firm the above loan was repaid with interest of Rs. 753-8-6 to the appellant-concern at Moulmein on the 13th February 1926 and the agent of the latter admitted collecting this loan and interest himself. But there was no record of the transaction in the new agency accounts.

Furthermore, the Income-tax Officer, Karaikudi, reported that the headquarters accounts of the appellant-concern showed two payments of interest of Rs. 8,569-7-6 and Rs. 1,104 as having been made during the accounting year Rakthakshi (1924-25) to the business at Moulmein. But in the accounts of the latter only the first item of interest was traceable. When the Income-tax Officer asked the agent to indicate where the second item appeared in the accounts the agent deliberately misled him by pointing out an altogether different receipt from the A.L.A.R. shop, Madras.

Finally, loans were admittedly given out, under the vilasams K.V.M. and N.V.M., by the appellant-concern at Moulmein from the proceeds of the paddy lands in the Thatôn District belonging to the proprietors. The above vilasams represent the names of the kwins, the proprietor and his son. The agent at Moulmein, who has been in the appellant-concern's employ for 15 years, told the Income-tax Officer, Moulmein, on two occasions—once in a sworn statement and again through his Pleader—that his employers are the owners of the paddy lands. A withdrawal by the proprietor Visvanathan Chettyar on the 7th August 1924 was debited to the Nallichan land account and the loan to the O.R.M. firm, Theinzeik, was made by the orders of Visvanathan Chettyar. It was thus clear that the loans advanced from the proceeds of the paddy lands were made by and on behalf of the appellant-concern. But their new agency accounts did not contain any record of these loans.

All the above facts came to light in the course of the further inquiry made by the Income-tax Officer when the case was remanded to him by the Assistant Commissioner and they gave the Assistant Commissioner grounds for thinking that the new agency accounts were incomplete and that the assessment based on those accounts was inadequate. In order to afford the appellant-concern an opportunity of disproving the correctness of these conclusions the Assistant Commissioner called upon them to produce (*a*) the old agency accounts, (*b*) the new agency accounts, (*c*) accounts showing the transactions with the C.R.M.S. firm, Rangoon, and (*d*) accounts relating to the investment of funds derived from the paddy lands in the Thatôn District. At a later stage the Assistant Commissioner also called for the production of the appellant-concern's headquarters accounts. The appellant-concern withheld all these accounts with the exception only of the new agency acconnts. They were given more than sufficient time and afforded every possible facility to produce the various accounts and they could easily have produced them. But it did not suit their purpose to produce any of the accounts referred to for fear that, with the cross references available here, the accounts would disclose the frauds that had been perpetrated. In addition to the discrepancies dealt with by the Assistant Commissioner there were other serious discrepancies in the new agency accounts of which the Assistant Commissioner did not take notice as they fell outside the accounting year.

6. I now come back to the original petition of appeal. I have dealt in paragraph 2 above with the grounds put forward in the first ten paragraphs of that petition. In paragraph 11 it is contended that the Assistant Commissioner acted irregularly and unjustly in insisting upon the production in Burma of the accounts which were at Puduvayal and that the proper course for him to adopt was to direct the Income-tax Officer at Karaikudi to examine the accounts there and to submit a report of such examination to him. I am unable to agree with this contention. When an assessment is made in Burma the authorities here have every right to

require the production of the assessee's accounts here. The Income-tax Act prescribes in section 64 that, in the first instance, the assessment shall be made at the place in which the business to be assessed is carried on or, if business is carried on at more than one place, at the principal place of business. It follows that the accounts for the purpose of the assessment should be examined at the place at which the assessment is to be made. That is only right, for it is only at the place in which the assessee is carrying on business where *ex hypothesi* means of checking anything in his accounts which require checking are available. If business was being carried on in London on behalf of a person resident somewhere in Russia the inquiry into his income for assessment to income-tax would be made in London and not in Russia. So also in the present case, where the bulk of the assessee's business is carried on in Burma, there is no reason why the inquiry for the purpose of arriving at a correct assessment should be made elsewhere than in Burma. It would be necessary to hold the inquiry in Burma even if there were no special reasons making this course desirable. But in the present case, where fraud was suspected and it was only possible to detect such fraud by correlation of the assessee's accounts with those of other assessees in Burma, it was doubly incumbent on the authorities in Burma to examine the accounts here and not elsewhere. Both on legal grounds and on grounds of expediency, therefore, it was necessary for the examination of the appellant-concern's accounts to take place in Burma. Indeed, I doubt whether the Assistant Commissioner had power to direct the Income-tax Officer at Karaikudi to examine the accounts there, a course which the appellant-concern suggest in the appeal. The only section of the Act under which the Assistant Commissioner could have acted was section 31 (2). But that section seems to me to contemplate that, if the Assistant Commissioner finds it necessary to have a further inquiry made, he should cause it to be made by the Income-tax Officer who made the assessment and not by any other Income-tax Officer. The Assistant Commissioner would therefore, in my opinion, have acted *ultra vires* of that section if he had directed the Income-tax Officer at Karaikudi, over whom he has no control or jurisdiction, to examine the appellant-concern's accounts there and report the result to him. I have no doubt that, if the Assistant-Commissioner had adopted such a course, the appellant-concern would have been the first to question the legality of it and made this one of their principal grounds of appeal. I therefore hold that the Assistant Commissioner was perfectly in order in requiring the production of the appellant-concern's accounts in Burma.

7. In paragraphs 12—14 of the petition of appeal the claim is made that there has been a division in the family of the proprietors of the appellant-concern whose status hitherto was that of a Hindu undivided family and who were always assessed on that basis in the past. The family originally consisted of three brothers, *viz.* (1) Visvanathan Chettyar, (2) Ramasawmi Chettyar and (3 Periannan Chettyar. Of these Ramasawmi Chettyar died several years ago—1893 to be exact—apparently leaving no heir and his surviving brother Periannan Chettyar was taken in adoption to his estate on the 18th May 1903. In March 1920 the said Periannan Chettyar also died leaving as his sole heir his widow Sivagami Achi. At the time when the assessment under reference came to be made the family consisted of (1) E. M. Visvanathan Chettyar with his son Muthappa and (2) Sivagami Achi, the widow of the deceased brother Periannan Chettyar, and they were assessed by the Income-tax Officer as a Hindu undivided family. They did not make a claim either before the Income-tax Officer at the time of the assessment or when they preferred an appeal to the Assistant Commissioner in April 1926 that the two branches of the family were divided. If a partition had in fact taken place one would have expected them to have mentioned the fact to the Income-tax Officer when the assessment was being made and it is strange, to say the least, that they did not do so. It is now alleged that a partition has been effected between E.M. Visvanathan Chettyar and his son Muthappa on the one hand and Sivagami Achi, the widow of the deceased brother Periannan Chettyar, on the other ; and that in consequence of such partition a portion of the properties and other assets of the family was made over to Sivagami Achi for her sole use and the remainder was retained by E. M. Visvanathan Chettyar. The said Sivagami Achi was to take a son in adoption and her branch of the undivided family assumed the vilasam RM.PR. denoting the original two branches of the deceased brothers Ramaswami Chettyar and Periannan Chettyar. It is further alleged that the omissions in the new agency accounts of the appellant-concern noticed by the Assistant Commissioner, which omissions are enumerated in paragraph 5 of this order, necessarily existed because they represent transactions connected with the assets taken over by Sivagami Achi's branch of the family and that these transactions are to be found in the separate accounts maintained for that branch and styled the RM.PR. accounts. This explanation is ingenious in the extreme, but the circumstances of the case, which I shall narrate later, leave no room for doubt that it is false. I will show that there are grounds for holding that the two surviving branches still constitute an undivided family and that there is no foundation in fact for the allegation that a partition has been effected between them. The claim that a partition had been effected between E.M. Visvanathan Chettyar and his deceased brother's widow Sivagami Achi was put forward for the first time in a petition presented to the Assistant Commissioner on the 16th August 1927 by the Moulmein agent Govindasawmy Naidu. This petition was submitted after the Assistant Commissioner had called upon the appellant-concern to produce the several sets of accounts referred to above and from the fact that the claim regarding the family partition was not made at an earlier stage there can be no doubt that the fable of partition was invented, as the simplest way out of their dilemma, only when the requisition by the Assistant Commissioner for the several sets of accounts gave the appellant-concern a

suspicion that the Income-tax authorities had discovered their frauds. Moreover, in the local agent's petition of the 16th August 1927 referred to above, it is explicitly stated that the family was divided during the lifetime of Periannan Chettyar, who was stated in the same petition to have died six or seven years ago, *i.e.*, about 1920 or 1921. In the affidavit of E. M. Visvanathan Chettyar filed before me it is definitely stated that Periannan Chettyar died on the 24th Masi of Sidharti (March 1920). But in the present appeal to me it is clearly alleged that the division was effected, after Periannan Chettyar's death, between his widow Sivagami Achi and E. M. Visvanathan Chettyar. In the affidavit by E. M. Visvanathan Chettyar referred to above the following passage occurs :—

> "After the death of the said Periannan Chettyar differences arose between the said widow Sivagami Achi and myself regarding the enjoyment of our family properties and the management of the family business"

and the affidavit goes on to state that, owing to these differences, a partition was effected between E. M. Visvanathan Chettyar and the widow Sivagami Achi. The allegations made in the appeal and in the subsequent affidavit of E. M. Visvanathan Chettyar regarding the time of the partition are thus incompatible with the allegation made in the petition dated the 16th August 1927 of the agent Govindaswamy Naidu. The said Govindaswamy Naidu, I may mention, had admittedly been in the employ of the family for about 15 years with intervals and there is no doubt that he was *au fait* with all the affairs of the family. A partition effected between two branches of a hitherto undivided family is necessarily an event of great domestic importance and if such a partition had in fact taken place the agent of the business in Burma, who has the handling of the principal's moneys and the maintenance of accounts in connection therewith, would inevitably have known about it and he would also have known exactly when such partition took place. It is therefore inconceivable that, writing with full responsibility, the agent would have stated in unambiguous language in his petition to the Assistant Commissioner that the partition took place during the lifetime of Periannan Chettyar (*i.e.*, prior to March 1920) if in fact it took place after the said Periannan Chettyar's death. Moreover, in the same petition the agent stated in equally unmistakable language that the terms of the alleged partition were not reduced to writing or registered whereas both in the present appeal to me and in E. M Visvanathan Chettyar's affidavit above mentioned it is alleged that the settlement was embodied in a written document executed on the 7th Avani of Ruthirothkari (corresponding to the 23rd August 1923). At the hearing of the appeal I pointed out to the appellant-concern's Counsel Mr. Patanjali Sastri the discrepancy between the statements of fact contained in the petition of the agent Govindaswamy Naidu and in the affidavit of the proprietor E. M. Visvanathan Chettyar. Mr. Patanjali Sastri was at first taken completely aback, but after a momentary hesitation he offered the explanation that the agent's statement about the partition having taken place in Periannan Chettyar's lifetime was that the negotiations for the partition began then although the actual partition did not take place till August 1923. This explanation is quite inconsistent with the statement in E. M. Visvanathan Chettyar's affidavit to the effect that the partition was due to disputes having arisen between himself and Sivagami Achi, the widow of Periannan Chettyar, after the death of the latter. The two statements are irreconcilable and Mr. Patanjali Sastri's attempted explanation is more resourceful than truthful. It is quite in keeping with the conclusion to which everything points, *viz.* that the whole story of the partition having taken place is entirely false.

8. The claim that there had been a partition in the appellant-concern's family was, as stated in paragraph 7 above, made for the first time in a petition to the Assistant Commissioner, dated the 16th August 1927. To fit in with this claim the appellant-concern made an attempt to have the RM. PR. estate assessed separately at Karaikudi for 1926-27. The Income-tax Officer at Karaikudi carefully investigated the matter by local inquiry and found that there was no truth in the allegations of partition and refrained from making a separate assessment at Karaikudi. In the appeal to me the appellant-concern contend that the Assistant Commissioner was in error in ignoring the partition. This contention is based on the assumption that the Income-tax Officer, Karaikudi, found that a partition had taken place but held that it was not valid as it had not been reduced to writing, that the Assistant Commissioner endorsed such finding and that he was wrong in doing so as an oral partition is a perfectly legal partition. This assumption is entirely erroneous. The exact terms of the letter from the Income-tax Officer, Karaikudi, to the Income-tax Officer, Moulmein, are as follows :—

> "My inquiries show that there has not been any regular partition between Visvanathan Chettyar and his brother's branch of the family."

The Assistant Commissioner refused to admit that there had been any partition at all. His order is quite clear on the point. The following is a relevant extract from the order :—

> "But the fact of the matter is that the RM, PR. estate and the E.M. concern are one and the same. The Income-tax Officer at Karaikudi has reported that there has been no proved partition between E.M. and RM. PR. If there has in fact been a partition, such partition could easily be proved by the accounts relating to RM. PR. and the non-production of these accounts only confirms the report of Income-tax Officer, Karaikudi, that there has been no real partition."

At the hearing of the present appeal Counsel for the appellant-concern attempted to side-track the argument into a consideration of the question whether an oral agreement to become divided made by the constituents of an undivided family is not legally effective and binding. But I pointed out to him that his assumptions were again incorrect and that, in view of the above-quoted passage from the Assistant Commissioner's order, the question which he propounded did not really arise. But even if it be conceded for the sake of argument that there was in fact a partition this fact could at most only excuse the non-production of the

accounts relating to the RM.PR. estate. There were still the old agency accounts of the E.M. concern and the headquarters' accounts which it was in the appellant-concern's power to produce and which they did not produce. The Assistant Commissioner gave the appellant-concern every facility for producing these and the other accounts called for. The explanation given for the non-production of the old agency accounts has only to be stated for its utter absurdity to be manifest. The explanation was that the accounts in question were actually sent to Burma by the proprietors but that they were accidentally lost on the wharf at Rangoon on the arrival of the person by whom they were sent. The Assistant Commissioner questioned the latter, who admitted that the loss had not been reported either to the Police or to the agents of the B.I.S.N. Company. At a later stage of the proceedings, when the appellant-concern were pressed for the old agency accounts, they stated that they hoped to be able to recover the lost account books and produce them in two months' time. This statement amounted to an admission that the books were still in their possession. The story of the alleged loss of the old agency accounts, coupled with the subsequent offer to produce them, is palpably false and is not even clever. The excuse given for the non-production of the headquarters accounts was equally clumsy and equally palpably false. The excuse was that the proprietors did not wish their agent at Moulmein to know the contents of the accounts. The greater probability, in my opinion, was that it was not the agent but the Income-tax authorities from whom the proprietors were anxious to conceal the contents of the account books, for if they did not wish the agent to see them there was no reason why they should not have submitted the account books direct to the Assistant Commissioner at Rangoon. With regard to these accounts too the appellant-concern subsequently offered to produce them when the Income-tax Officer, Karaikudi, had done with them. But they were never produced. There can be no doubt that both the earlier refusal to produce the old agency accounts and the headquarters' accounts and the subsequent offer to produce them were in pursuance of a deliberate policy and that the allegations of the loss of the former accounts and of the proprietor's unwillingness that the agent should see the latter accounts were false. My opinion is that, when the appellant-concern first came to know that the Income-tax authorities had begun to suspect their frauds, they were thrown into a panic and invented these fictitious excuses on the spur of the moment, but that later on, when they had had time to reflect and take legal advice, they were convinced of the hollowness of their excuses and then decided to change their tactics. Even as regards the accounts of the alleged separate RM.PR. estate it was in the power of the appellant-concern to secure their production before the Assistant Commissioner in Burma. On their own showing Muthappa Chettyar, son of E. M. Visvanathan Chettyar, was managing the affairs of the alleged separate estate on behalf of the widow Sivagami Achi pending the adoption by her of a son. Even assuming, again for the sake of argument, that the two estates were separate legal entities the fact is that the accounts of the RM.PR. estate were necessarily under the control, if not actually in the possession, of Muthappa Chettyar and through him of his father E. M. Visvanathan Chettyar and they could easily have been produced before the Assistant Commissioner at Rangoon. It is alleged in the appeal that the reason for the non-production of these accounts was that they were at the time with the Income-tax Officer at Karaikudi. But the accounts were produced before the Income-tax Officer, Karaikudi, only in September 1927, whereas they were called for by the Assistant Commissioner in Burma on the 24th June 1927 and the date fixed for their production was the 27th July 1927. The accounts should have been produced in Burma first as they were required in connection with the appeal against the assessment for 1925-26, whereas the Income-tax Officer, Karaikudi, required them in connection with the 1926-27 and 1927-28 assessments. Extensions of time for the production of the accounts in Burma were given by the Assistant Commissioner and the date finally fixed for their production was the 7th December 1927. They could have been produced even then as they were not before the Income-tax Officer, Karaikudi, again till January 1928; but they were never produced. It is also alleged in the appeal that the Income-tax Officer, Karaikudi, had himself recognised the RM.PR. branch of the family as a separate and a distinct taxable entity in the succeeding year and was assessing it separately. This is a perversion of the truth. The real facts are that the appellant-concern themselves became alive to the necessity of having the alleged separate RM.PR. estate assessed separately at Karaikudi in conformity with the stand which the discovery of their frauds by the Income-tax authorities in Burma had forced them to take and they accordingly took steps to secure the separate assessment of the RM PR. estate by the Income-tax Officer at Karaikudi. The latter, in ignorance of the true facts, actually issued a notice under section 22 (2) to the RM.PR. estate with a view to assessing it for 1926-27. But as soon as he found that there had not been a real partition in the family he arrested his assessment proceedings and requested the Income-tax Officer in Burma to assess the income of both branches of the family jointly in Burma. A separate assessment was never actually made at Karaikudi. Thus in this matter also the appellant-concern have—to put it mildly—displayed disingenuousness.

9. I now come to paragraph 15 of the petition of appeal. In paragraph 5 of this order I referred to the transfer of a sum of Rs. 1,34,500 outstanding against a customer named G. M. Lotiah to the new agency accounts and commented on the fact that, instead of making a debit entry against Lotiah with a corresponding credit entry in the "old account" folio, the transfer was effected by making a credit entry in the account of one Ahmed Ajam Pippidi, the transfer of which account itself was effected by three separate instalments

instead of by a single transaction. The appellant-concern now explain that the original loans to Lotiali were made by the EM. concern as formerly constituted and that when the partition took place this asset was allotted to the RM.PR. branch. Later on, when it was found that the debtor was not able to liquidate his debts in full, a remission had to be made and the transaction ended in a loss. As it was not desired that the loss should be borne by the RM.PR. branch the asset was taken back by the E.M. branch and that is why it re-appeared in the new agency accounts of the latter after some time. This explanation cannot be accepted. So far as it has any validity, it only disproves the alleged partition. If there had been a partition it would have been impossible to transfer and re-transfer assets and liabilities from one branch of the family to the other at the will and pleasure of Visvanathan Chettyar. The real reason for bringing the Lotiah transactions back to the new agency accounts of the E.M. concern was no doubt that it was desired to claim the loss as a deduction in computing the taxable profits of that concern. Anyhow the appellant concern have no satisfactory explanation for passing the Lotiah transactions through the account styled Ahmed Ajam Pippidi. The transactions with another customer named Lonsdale were also passed through the Pippidi account. Apparently, as in the case of Lotiah, the Lonsdale transactions were first transferred to the secret accounts. Later, when it was known that this department had received information of Lonsdale's dealings with the appellant-concern, the latter found it necessary to show his transactions in their new agency accounts and they accordingly re-transferred the asset to those accounts. The Lonsdale asset appeared in the new agency accounts in October 1926 and the agent stated that it was a new loan. When he was asked whether he had had previous dealings with this customer he said that he had had no transactions during the previous four years. The falsity of this statement was proved by documents found in Lonsdale's possession which showed that he had been dealing regularly and continuously with the appellant-concern during those four years. His transactions were found in the Pippidi account. There is no doubt that the account styled Ahmad Ajam Pippidi is nothing but a linking account between the new agency accounts of E.M. produced before the Income-tax Officer and the secret set of accounts which were withheld. But it is to be noted that the agent stated to the Income-tax Officer, Moulmein, on the14th May 1927 that the transactions entered in the Pippidi account were real transactions with Pippidi himself. When I asked the appellant-concern's Advocate Mr. Patanjali Sastri about the account styled Ahmad Ajam Pippidi he was obliged to confess that it was a fictitious account invented with the object of concealing from the Income-tax authorities the existence of the RM. PR. branch of the family as a separate taxable entity. This admission is disingenuous as the real object was to reduce the income of the E.M. concern. But, even taken at its face value, it is an amazing admission. To the extent that the Pippidi account is a fictitious account the new agency accounts of the appellant-concern produced before the Income-tax Officer are spurious. It is also clear that the accounts have been manipulated from time to time to hide the shortcomings in them. The conduct of the appellant-concern in persevering with the appeal after deliberately withholding the most important of the accounts and after being forced to admit that part at least of the incomplete accounts which they produced before the Income-tax Officer was spurious can only be characterized as impudent.

10. Apart from the undoubted manipulation of accounts with regard to the Lotiah and Lonsdale transactions and the maintenance of the admittedly fictitious Pippidi account there are other facts which go to show that the appellant-concern have prepetrated frauds and that the explanation that there has been a partition in the family is false. In the first place the RM. PR. estate was never heard of in Moulmein or even in Karaikudi until the appellant-concern themselves created the fiction on the discovery of their frauds by the Income-tax authorities. If the separate RM. PR. estate did in fact come into exitence in 1924 as alleged, it was inevitable from the nature of things that other Chettyar concerns in Moulmein would have known of its existence. There would undoubtedly have been references to it in their accounts for current transactions would inevitably have taken place between them. But none of the other Chettyar concerns in Moulmein had heard of the RM. PR. estate and their accounts did not contain any record of transactions with it. The customers whose transactions were transferred to the RM. PR. accounts at the alleged partition would also surely have been apprised of such transfer for the mutual protection of both, creditor and debtor. In this way Lotiah and Lonsdale would have known that they were not dealing with E.M. any longer but with RM. PR. But Lonsdale, when questioned by the Income-tax Officer, was not aware of the existence of RM. PR. and stated that his dealings were with E.M.; and the receipts found in his possession, dated the 24th February 1925 and the 2nd March 1925, were granted by E M. and not by RM. PR. Lotiah was not questioned by the Income-tax Officer. Now, supposing Lonsdale had defaulted it would have been E.M. who would have had to sue him and not RM. PR. as the pro-notes were in the name of the former. If, as alleged, a partition had really taken place the RM. PR. branch would surely have seen to it that Lonsdale's loans and other loans allotted to them at the division were regularly transferred to them to make their legal position secure and to enable them to sue the debtors in case of default. But no such thing was done. In the second place, as I have stated elsewhere, loans were issued to certain Chettyar concerns from the sale proceeds of the produce of paddy lands in the Thatôn District. These loans were advanced under the vilasams K.V.M. and N.V.M. which denote the kwins and Visvanathan Chettyar and his son Muthappa Chettyar and they did not find a place in the new agency accounts of E.M. If, as alleged, these transactions were made on behalf of RM. PR. and were entered in the accounts of that

branch they would surely have been lent out under the vilasam RM. PR. Moreover, in the accounts of the O.R.M. firm the loan issued to them under the vilasam K.V.M. was shown as having been taken from, and repaid to, E.M., Moulmein, and not RM. PR. In the third place the paddy lands under reference, which are alleged to have been allotted to the RM. PR. branch at the alleged partition in 1923, still admittedly stand in the name of E.M. Visvanathan Chettyar in the Revenue Registers; and the agent of the E.M. concern at Moulmein, when examined by the Income-tax Officer, Moulmein, on the 11th May 1927, stated as follows:—

> "We have over 2,000 acres of paddy lands all of which are situated in the Thatôn District. The investments in those paddy lands are not found in the books which I have produced."

The same agent told the Income-tax Officer subsequently that the transactions made out of the proceeds of the produce of the paddy lands in question were to be found in his principal's (Visvanathan Chettyar's) headquarters' accounts. All these facts taken in conjunction with the other discrepancies already pointed out prove that the appellant-concern have resorted to fraudulent practices with the object of deceiving the Income-tax Department and that the story of a partition in the family is undoubtedly a fabrication invented for the purpose of covering up their frauds.

11. At the hearing of this appeal Mr. Patanjali Sastri offered to produce the RM. PR. accounts and asked that they might be examined. I decided not to admit these accounts in evidence at this stage as they were repeatedly called for by the Assistant Commissioner but were withheld from him with a determination which amounted to contumacy. The proper time for the production of these accounts was before the Assistant Commissioner and no satisfactory explanation has been given for their non-production then. It is an ordinary rule of practice that evidence which could have been produced before the Lower Court but was not produced there should not ordinarily be accepted at a later stage by an appellate court. In the present case, where frauds have undoubtedly been perpetrated, it is the more necessary that I should not depart from that rule. I am quite convinced that the RM. PR. accounts, like the new agency accounts of the E.M. concern, have now been manipulated in such a way as to dovetail into the latter in order to support the theory of the family partition which has been advanced. As the RM. PR. accounts were not produced before there is no means of verifying to what extent, if any, they are genuine and to what extent they are spurious. Even admitting that outwardly they have the appearance of being genuine and internally are consistent both in themselves and in correlation with other accounts, that is only to be expected of accounts which were specially fabricated for the occasion and does not necessarily prove that they are not spurious. There is no contemporary evidence to show that these accounts, purporting as they no doubt do to have been started in 1924, were in existence prior to the discovery of the appellant-concern's frauds by the Assistant Commissioner. On the other hand, there are very cogent reasons for believing that the accounts did not exist before but have since been fabricated to fit in with the false story of a family partition. The accounts are therefore of no value as evidence at this stage and no useful purpose will be served by accepting them as such and having them examined now. Moreover, the E.M. concern's old agency accounts and the headquarters accounts have not been produced even before me. If there is any truth in the theory of a family partition these accounts would go a long way to proving it. The reason for the non-production of these accounts is obvious. The old agency accounts have been previously examined in this Province while the headquarters accounts have also probably been examined by the Income-tax Officer at Karaikudi and the appellant-concern have apparently not found it possible to make alterations in them to suit their present purpose without incurring the risk of such alterations being detected by this Department. Affidavits by E.M. Visvanathan Chettyar and one V. R. M. S. Subramanian Chettyar sworn on the 17th April 1928 have been filed before me to prove that a partition did in fact take place between the former's branch of the family and Sivagami Achi, widow of his deceased brother Periannan Chettyar. These affidavits also are of no value at this stage. They should have been filed before the Assistant Commissioner before his order enhancing the assessment was passed. In any case, as I have shown in paragraph 7 above, there are some serious discrepancies in regard to questions of fact in the statements made in E. M. Visvanathan Chettyar's affidavit and in the statements previously made on his behalf by his agent Govindasawmy Naidu. In view of these discrepancies and of the unexplained delay in filing the affidavits I have no doubt in my mind that the affidavits too are false. It is a perfectly simple matter for a person in E. M. Visvanathan Chettyar's position to get any number of affidavits, but because they are sworn affidavits it does not mean that they are necessarily true. The swearing of false affidavits is, from the proprietor's point of view, of small account when so much is at stake. In any event the appellant-cencern have in the past adopted the attitude that the alleged partition between the two branches of the family was an informal partition effected by an oral agreement which was not reduced to writing, whereas it is now alleged in the affidavits that the partition was effected by regular arbitration and that the award of the arbitrators was given in writing. This fundamental discrepancy strikes at the very root of the story that there was a partition and proves conclusively that the present affidavits are false. As I have already stated, the question which the Assistant Commissioner was called upon to decide was not whether an admitted partition was a valid partition but whether a partition had in fact taken place at all. The family was hitherto undivided and the appellant-concern contended that a partition had taken place. Under the ordinary rules of evidence it was for them to prove that contention. They failed to prove it and the Assistant Commissioner accordingly decided the question against them. That question was purely a

question of fact and on the evidence before him the Assistant Commissioner's finding was undoubtedly correct.

12. The position therefore is that the income of the E.M. concern for the purpose of assessment to income-tax for the year 1925-26 was originally worked out by the Income-tax Officer from accounts which were not only incomplete but which, on the appellant-concern's own showing, were also spurious in part at least. It is obvious from this that the assessment which was made was not a correct assessment. It is also obvious that the assessment was inadequate. The Assistant Commissioner was therefore fully justified in taking steps to enhance that assessment. For that purpose he called upon the appellant-concern to produce certain specified accounts. These accounts were deliberately and contumaciously withheld from him. The excuses given for their non-production were palpably false. Measures of fraud and deceit were resorted to by the appellant-concern and perjury was committed; either by the agent or by the principal, in order to conceal the frauds detected in the incomplete accounts. Instead of producing their accounts at once they invented a false story of a partition in the family as the simplest way of explaining the shortcomings found in the incomplete accounts produced and from that point onwards they developed the story of partition and actually fabricated fresh accounts, *viz.*, the RM. PR. accounts, to fit in with it. In all my experience I have never known a worse case of deceit and fraud. From the beginning the appellant-concern deliberately set out to defraud Government of its just dues. In the past when there was more laxity in the administration of income-tax in Moulmein the appellant-concern were practically allowed to assess themselves. With the appointment of a whole-time Income-tax Officer to Moulmein at the end of 1923 the reins were tightened up. The appellant-concern in order to continue to get off with underassessment resorted to tactics of fraud. When the whole-time Income-tax Officer arrived in Moulmein he took steps to re-assess the appellant-concern's income for 1923-24 under the provisions of section 34 of the Act. The appellant-concern on that occasion also deliberately withheld their accounts from the Income-tax Officer, who was obliged to make the assessment under the provisions of section 23 (4). He enhanced the assessment considerably although, in the light of subsequent information, even that assessment was probably inadequate. For the assessment for 1924-25 the appellant-concern's agent (the present Govindasawmy Naidu) for the first time made an attempt to file a proper return of income supported by a profit and loss statement prepared by a firm of Chartered Accountants. But when he was directed to produce the original accounts for examination he raised all sorts of objections and eventually withheld them. The assessment for that year also was therefore made under section 23 (4). It was only in 1925-26 that accounts were produced. This is the assessment which went up on appeal to the Assistant Commissioner, who enhanced the assessment and whose order of enhancement is the subject of the present appeal. As I have shown above, the accounts on which the assessment was based were admittedly incomplete and partly spurious. In all the circumstances of the case I have no hesitation in confirming the Assistant Commissioner's assessment of the income from the appellant-concern's "Burma business" at Rs. 2,00,000.

13. The appeal is dismissed.

J. C. MACKENZIE,
Commissioner of Income-tax, Burma.

IN THE HIGH COURT OF JUDICATURE AT RANGOON.

Dated Rangoon, the 3rd day of January 1929.

Civil Miscellaneous Application No.70 of 1928.

M.R.Ry.Somasundaram Chettyar Avergal, by his agent and attorney L. Kuppuswamy. Vs. Commissioner of Income-tax.

Application for a mandamus under section 66(3) of the Indian Income-tax Act, 1922.

For Applicant - - - - - Mr. Foucar.

For Respondent - - - - Government Advocate.

JUDGMENT.

This is a reference made by the Commissioner of Income -Tax in compliance with a mandamus issued by this Court under section 66(3) of the Indian Income Tax Act. The question referred, namely "After an Assessee has made a return of his income under section 22(2), can the assessment be made under section 23(4) of the Act for non-compliance with the terms of a notice under section 22(4) ? "

In Civil Reference No.10 of 1928 we have today answered this question in the affirmative and therefore no further discussion of it is necessary.

But the assessee contends that the referring of this question only is not a sufficient compliance with the directions pf this Court.

The Assessee is the P.K.N. Chettyar Firm, which, it is claimed, is a foreign firm, having its head-quarters at Vishvanathapuram in Pudukota State. It has also branches not in British India at Jaffna, Alleppey, Moovar and Malacca. It has a branch in Rangoon which carries on a banking and money lending business, but this part of the business does not appear to be in question in the present controversy. This branch on occasions purchases rice in Rangoon and consigns it to the Jaffna and Alleppey branches. The Income Tax Officer served the assessee, under section 22(4) of the Act, with a notice to produce the accounts of the Jaffna and Alleppey branches and on his failure to comply

with that notice made the assessment under section 23(4).

Essentially the assessee's contention is that the accounts called for are foreign accounts which he cannot be required to produce, that the notice under section 22(4) was therefore ultra vires, and that failure to comply with it is not a default which entitles the Income-tax Officer to make the assessment under section 23(4). He did in his application for a mandamus also to raise the question which has actually been referred.

The first question before us is of the construction of the order issuing the mandamus, and it must be admitted that the intention of the learned judges is not altogether clear. On the one hand they said:-

" The Commissioner held that the only question for "determination was whether the assessee's refusal to produce his books "was a good reason for making the assessment under section 23(4).

" He was of opinion that the answer was so obvious "as not to call for a reference. In view of the fact that the firm "is not resident in British India, and that the agent in Rangoon "merely purchased rice under orders in Rangoon for shipment to Jaffna, "the question of whether the Rangoon agent could be called upon to "produce the books of the Jaffna and Alleppey branches is perhaps "not quite so simple as the Commissioner thought".

This paragraph suggests that the learned judges thought that the contention of the assessee was one that should be considered by the Court.

On the other hand they went on to say:-

" The points on which a reference is desired are:-

" (1) whether the assessment has been legally made under " section 23(4), and

" (2) whether the assessee can be denied his right of appeal " where he denies the liability to be assessed

(a) as an unregistered firm,

(b) on the foreign income of his non-resident principals.

(c) as a successor to P.K.N.C.T.".

They then referred to certain conflicting decisions (which we have considered in Civil Reference No.10) and finally said:-

" In view of the conflicting decisions we consider it "desirable that the question should be settled by a ruling of this "Court. We accordingly direct that the Commissioner of Income-Tax "do state and refer the case with reference to the question whether "the assessment has been legally made under section 23(4).

" We do not consider that the other points which we are "asked to have referred call for an independent Reference. "

Now the conflict between the decisions mentioned was on the question whether a notice under section 22(4) of the Act can be issued after the assessee has made a return of his income - that is, on the question which the Commissioner has now referred. The form of the final order therefore rather suggests that the learned judges intended that only that question should be referred.

But reading their judgment as a whole we think that the question whether the Income Tax Officer had the power by a notice under section 22(4) to require the production of the books of branches not in British India of a firm that is itself a foreign firm is in fact included in the question of the legality of the assessment. If the officer had not that power, then it would seem that failure to comply with an illegal notice cannot be treated as a default rendering the assessee liable to assessment under section 23 (4).

We think also that this is a question of law of very considerable importance and that it should be decided. We note that the case of Duni Chand vs. The Commissioner of Income Tax (1) has some bearing on this question.

We therefore answer the question referred in the affirmative, for the reasons given in Civil Reference No.10 of 1928.

We direct further that the Commissioner of Income Tax do state the case and refer to this Court the further question whether,

in the circumstances of this case, it was open to the Income Tax Officer to require the production of the books of the Jaffna and Alleppey branches of the assessee; and, if not, whether the failure to comply with such a requisition is a default within the meaning of section 23(4) of the Act and renders the assessee liable to assessment under that sub.section. Costs reserved.

Sd/- Guy Rutledge,
Chief Justice.

Sd/- H. A. Brown,
J u d g e.

Sd/-W.Carr
J u d g e.

(True copy)

IN THE HIGH COURT OF JUDICATURE AT RANGOON.

Dated Rangoon the 18th day of March 1929.

Civil Miscellaneous Application No.141 of 1928.

T.O. Foster Versus The Commissioner of Income-tax.

Application for a mandamus under section 66 (3) of the Indian Income Tax Act.

For Applicant Mr. McDonnell.

For Respondent Mr. Foucar.

JUDGMENT.

The applicant, Mr. T.O. Foster, an Architect, made a return of his income for 1925-26, for the assessment of Income-tax for the year 1926-27. The Income-tax Officer after enquiry assessed his income at Rs. 164316/- Applicant appealed to the Assistant Commissioner of Income-tax who dismissed his appeal. He then applied to the Commissioner of Income-tax to state the case and to refer it to this Court under Section 66 (2) of the Income-tax Act but the Commissioner refused.

Applicant now comes to us for an order requiring the Commissioner to state and refer the case under section 66 (3) of the Act.

The only question which is before us at present is whether or not a question of law arises on the Assistant Commissioner's order

The sum in dispute is Rs.85,000/-, which had been earned in 1925-26 but of which only Rs.37000/- was actually received in 1926-27,

It is not denied that in the accounts of his business applicant gives credit for income earned and not income received during the year. This is of course to his advantage as otherwise so large an amount of income might be received in a particular year, although it had been earned in other years, that tax would have to be paid on it at a much higher rate than would be payable if it had been assessed in the years during which it was earned. It is not denied that in the past the assessment has

made on the basis of income earned, and not of income actually received. In his return for 1926-27 applicant deducted this sum of Rs.85000/- because although it was earned in the year 1925-26 on which the assessment was based it was not actually received during that year and only part of it was actually received during 1926-27. In effect therefore he claimed to be entitled to alter his system of accounting in respect of this item so as to exclude it from his assessment, although on the method of accounting adopted by him, it ought to have been included. He does not suggest that it is a bad debt or that he will not receive it in due course. All that he says is that he did not actually receive it in the year on the income of which his assessment is based and that he received only part of it in the year for which he was being assessed. In our opinion the question whether or not he actually received it is immaterial. If he never receives it he will of course be entitled to an allowance in respect of it. What is material is that he keeps his accounts in such a way that credit ought to be given in them for this amount as income earned during the year on which the disputed assessment is based, and that under section 13 of the Income-tax Act income for the purpose of the assessment of Income-tax is to be computed in accordance with the method of accounting regularly employed by the assessee.

It is clear that according to the method of accounting regularly employed by applicant, the amount in dispute ought to be included in the income of the year on which the disputed assessment is based and in these circumstances we fail to see that any question of law arises.

None of the questions of law mentioned in applicant's application arises. The first two do not arise because there is now no suggestion that the entry of Rs.85000/- was a mistaken estimate of income actually earned, and the third does not arise because on the system of accounting adopted by applicant income earned and not income received is the basis of the assessment.

The application is dismissed with costs, advocate's fee to be five gold mohurs.

Sd/ R.E. Otter, Judge.

Sd/ B.H. Heald, Judge.

True Copy. Appadia Clerk.

KR 29/4

Sd/ R.E. Otter,

Sd/ B.H. Heald,

IN THE HIGH COURT OF JUDICATURE AT LAHORE.

Reference Side, Civil

No. 31 of 1927.

Case referred under Sec.66(2) of the Income-tax Act, 1922, by A.M.Stow, Esquire, O.B.E., I.C.S., Chief Commissioner, Delhi, with his letter No.244 of the 24th September 1927, for the orders of the High Court.

Present :

Mr. Justice Tek Chand,

and

Mr. Justice Agha Haidar.

Messrs. Karam Ilahi Muhammad Shafi, Assessee-Petitioners,

Versus

Chief Commissioner, Income-tax, Delhi, Respondent.

In the matter of assessment of Income-tax for the year 1926-27 on Karam Ilahi Muhammad Shafi.

Petitioners:- By Rai Bahadur Dr.Moti Sagar and Mr. Bisham Narain, Advocates.

Respondent:- By Mr.C.H.Carden Noad, Government Advocate.

ORDER OF THE HIGH COURT.

In order to understand clearly the point of law involved in this reference, it is necessary to state the following facts which are admitted as correct by counsel on both sides. The assessee, Messrs Karam Ilahi Muhammad Shafi of Delhi, had in the accounting period in question three different sources of income :-

(a) rent from house property at Delhi,
(b) business of oilman's stores etc.in Saddar Bazar Delhi; and,
(c) business known as Rahman Ice Factory, Delhi.

The assessee submitted a return showing profits in (A) but losses in (B) and (C) and claimed to set off the latter against the former. The Income-tax Officer admitted the claim so far as the loss in (B) was concerned and there is now no dispute with regard to it. He, however, refused to allow the set off in respect of the alleged 'loss' in Rahman Ice Factory (c), in so far as it consisted of depreciation of buildings and machinery, which the assessee claimed to deduct under sub-clause (vi) of section 10(2) of the Act. This order was upheld on appeal by the Assistant Commissioner and on review by the Commissioner who held that under the Act, this allowance was permissible only if there had been actual gain or profit under this particular head of business i.e. the Rahman Ice Factory in the year in question, and that failing such income the proper procedure under proviso (b) to sub-clause (vi) of section 10(2) was to carry over the depreciation to succeeding years, until there were sufficient profits from this particular business, against which alone it could be set off. On the application of the assessee the Commissioner has, however, referred the following question to this Court for decision under section 66:-

"Can depreciation on buildings and machinery be set off against gains and profits accrued to the owner of those buildings and machinery from other sources, such as rental from house property?".

The decision of the question depends on the interpretation of sections 6, 10 and 24(1) of the Income-tax Act. Section 6 enumerates the various heads of income, profits and gains chargeable to income-tax. Of these we are concerned in this case with heads (iii) and (iv) i.e. "Property" and "Business" only. Section 24(i) lays down that where any assessee sustains a "loss of profits or gains under any other head in that year. The loss of

*in any year under any of the heads mentioned in Sec.6, he shall be entitled to have the amount of the loss set off against his income, profits or gains.

profits or gains under "Business" can therefore, be set off against the income from rental on property.

Sec.10 provides the mode of computing "profits or gains" under the head "business". Sub-section (1) of this section is to the effect that the tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him. It has been ruled by the Madras High Court that the word 'any' in this clause means "each and every business" and not merely each business separately (I.L.R.47 Mad.660) and this ruling has been followed in this Court. It may, therefore, be taken as settled law that if a person carries on two or more distinct businesses, the profits or losses of all of them are to be added together, and the aggregate sum so arrived at represents his "profits or gains" under the head "Business". If the net result of this calculation shows a loss, such loss may under Sec.24, be set off against the profits or gains derived by the assessee from other heads of income in that year.

According to sub-section (2) of section 10 the "profits or gains" under each head of business are to be computed after making certain allowances which are enumerated therein. It is conceded by the learned Government Advocate that if after deducting the allowances described in clauses (i) to (v), (viii) and (ix) of this sub-section there is a net loss in a particular business such loss can be adjusted against the profits in another business as well as against profits or gains under other sources of income. But he contends that a different rule must be followed in respect of the allowances mentioned in clauses (vi) and (vii) inasmuch as they are in the nature of depreciation of capital and unless there is a profit in that particular business in the year in question they cannot be taken into account.

After carefully examining the provisions of the Act, I find myself unable to accept this contention as correct. Section 10 makes no such distinction among the various kinds of allowances to which an assessee is held entitled, and there is no justification for treating the allowances described in clauses (vi) and (vii) differently from those mentioned in the other clauses of the sub-section. It is no doubt true that these allowances do not represent actual payments made by the assessee during the year, but the Legislature has expressly permitted the assessee to deduct every year a certain percentage of his outlay on buildings and machinery before his assessable income can be ascertained, and in the absence of clear and explicit words to the contrary I can see no reason for holding that this allowance can be claimed only if sufficient profits have accrued in the particular business in which the machinery and buildings were used.

For the respondent reliance is placed principally on proviso (b) to clause (vi) which runs as follows :-

" Provided that-

X X X X

"(b) where full effect cannot be given to any such allowance in any year owing to their being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years. This proviso, however, if construed according to its plain wording, cannot possibly bear the construction sought to be put on it on behalf of the Crown. The learned Government Advocate has very fairly and properly conceded that this

interpretation is possible only if the words "no profits or gains" are read as meaning" no profits or gains of the particular business of which the financial results are being computed. "But I do not find any warrant for importing in the clear and explicit pharseology used in the Statute the additional words suggested on behalf of the respondent. Reading the proviso in its plain meaning and interpreting it according to well-settled canons of construction of fiscal statutes, I have no hesitation in holding that the 'profits or gains' referred to above are profits or gains generally from whatsoever source derived and are not confined to profits or gains of the particular business alone in which the buildings and machinery were used. I have no doubt that the provision for carrying over the unabsorbed depreciation allowance to the succeeding years is not the exclusive remedy allowed to the assessee and cannot be interpreted as debarring him from claiming the benefit of the earlier part of the sub-section.

My answer to the question referred to this Court therefore, is that under sub-clause (vi) of section 10(2) depreciation on buildings and machinery can be set off against gains and profits accrued to the owner of those buildings and machinery from other sources such as rental from house property during the year in question.

Having regard to all the circumstances, I would leave the parties to bear their own costs of these proceedings in this Court.

The announcement of this judgment has been delayed as after arguments in this case had been heard and judgment reserved, it was represented to me that the question involved in this reference had been considered and decided by a Full Bench of the Madras High Court in a case which had not yet been reported and that I should consult that decision before passing orders. I have since had the advantage of perusing the Madras judgment but am disappointed to find that it dealt with a totally different point, which had no bearing whatsoever on the question before us.

Sd/- Tek Chand,

I agree.

Sd/- S.Agha Haidar,

8th April 1929.

Judges.

A T T E S T E D

Rameshwar Nath
Supdt.,
Office of Commr.of Incometax,Pb.,
N.W.F.and Delhi Provinces,Lahore.

IN THE HIGH COURT OF JUDICATURE AT LAHORE.

REFERENCE SIDE. CIVIL.

No. 34 of 1928.

Case referred under Sec.66(2) of the Income-tax Act,1922, by Sir John Thompson, K.C.I.E., C.S.I., I.C.S., Chief Commissioner, Delhi, with his No.41-Camp,of 22nd September 1928, for orders of the High Court.

Present :

Mr.Justice Tek Chand,

and

Mr.Justice Agha Haidar.

In the matter of Income-tax Assessment for the year 1927-28 on Messrs.Chhunna Mal Salig Ram.

Messrs.Chhunna Mal Salig Ram, by Rai Bahadur Lala Badri Das, Advocate.

(Crown) By Mr.C.H.Carden Noad,Government Advocate.

ORDER OF THE HIGH COURT

This is a reference by the Commissioner of Income-tax Delhi, under Sec.66(2) of the Indian Income-tax Act,(Act XI of 1922). The point involved in this reference is a short one and may be stated as follows :-

Messrs.Chunna Mal Salig Ram of Chandni Chowk, Delhi, are extensive owners of house property.The Municipal Committee Delhi, has imposed upon them a house tax of Rs.6,760/-. This has been added by the Income-tax Officer to their income derived from house-rents,which amounts to Rs.2,47,349/- This amount of the house tax actually realised by the assessees in the year in question came to Rs.5,5437- only. The question is whether Messrs.Chunna Mal Salig Ram should be assessed to income-tax on their annual rental Rs.2,47,349/-, or upon the total of the two items, namely, the annual rental plus the house tax Rs.2,54,109/-. The matter is one of first impression and as authority directly in point has been brought to our notice by counsel for the parties.

The section of the Indian Income-tax Act directly in point is section 9 which lays down that "the tax shall be payable by an assessee under the head 'Property' in respect of the bona fide annual value of property consisting of any buildings or land appurtenant thereto of which he is the owner".

Then certain allowances are mentioned which the assessee is entitled to deduct from the annual value of the property.The phrase 'annual value' is defined in sub-section (2) of section 9 which says that "for the purposes of this section,the expression 'annual value' shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year". Reliance has been placed on behalf of the assessee upon section 3(1) (b) of the Punjab Municipal Act,1911,where the term 'annual value' is interpreted to mean' "in the case of any house or building,the gross annual rent at which such house or building,together with its appurtenances * * * may reasonably be expected to let from year to year, Explanation (II) of section 3 says "the term 'gross annual rent' shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant". But as pointed out by the Commissioner,there is no contention that any such agreement as if referred to here was ever entered into between the assessee and their tenants.

The question for decision is whether the house tax, which has been imposed by the Municipal Committee,Delhi, is included in the expression 'annual value', that is to say,whether the assessee is liable to pay an increased income-tax because the Municipal Committee has imposed the house tax upon him under the provisions of section 61(1) (a) of the Municipal Act. The tax

ity and substance to be an occupation tax d is an incident of the property being occupied by the tenant. This is put beyond question by the rule, quoted by the Assistant Commissioner in his order dated the 27th of July 1928, that, although for short periods the landlord may be liable to pay the tax even in the case of the premises lying vacant, yet if the house remains unoccupied for a period exceeding two months the owner can claim remission of the tax from the Municipal Committee. The mere fact that the landlord has to pay the tax to the Municipal Committee and that the tenant is left alone does not prove that it is not a tenant's tax. The reason is obvious. The landlord has got immoveable property and is a person who has got a stake in it, while a tenant need not be a permanent resident of the locality and may be a mere bird of passage. The Legislature, therefore, in the interests of the Municipal Committee, has adopted the convenient method of realising the tax by making it demandable from the landlord, leaving the latter to realise it from the tenant. This mode of realisation, so eminently convenient to the Municipal Committee, cannot be made more onerous than it really is to the landlord under the Income Tax Act. Judging from the common sense point of view. I fail to understand why this liability, which is imposed upon the landlord, to collect the tax from the tenant and to pay it in to the coffers of the Municipality should be treated as forming part of the annual value of his property on which he should pay the income-tax. The question in my judgment, must be decided according to the provisions of the Income-tax Act and that Act does not contain anything which would support the contention of the Government Advocate.

I may here mention that the learned Government Advocate invited our attention to the case of Veerabhadrah Iyer v. President, Corporation of Madras (35 I.C.589). That was a case under Sec.130(1) of the Madras City Municipal Act, (III of 1904), and, if it is applicable at all, its reasoning tends to support the contention of the counsel for the assessee.

I would, therefore, answer the reference by holding that the house tax is not a part of the rent or the annual income accruing from the house property to the landlord, but is a mere liability of the landlord incidental to his owning the property which he lets out to the tenants on rent. It cannot, therefore, come within the meaning of the expression 'annual value' and, therefore, the assessee is not liable to an enhanced tax by the addition of the amount of the house tax to the annual rental of the property.

Sd/- S. Agha Haidar
Judge.

15th April 1929.

I agree in the answer to the reference, given by my learned brother.

Sd/- Tek Chand,
Judge.

15th April 1929.

A T T E S T E D

Rameshwar Nath
Supdt.,
Office of Commr. of I.Tax, Pb.

46

From

F.Raisman,Esquire,I.
Commissioner of Income Tax,Punjab,
N.W.F. & Delhi Provinces,Lahore:

The Commissioner of Income Tax,
Bangalore.

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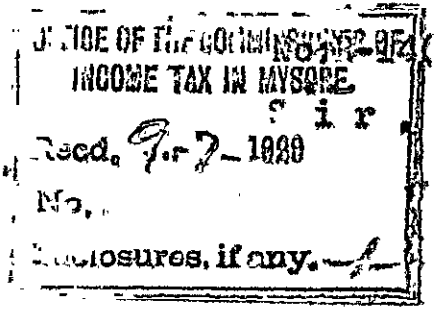

No.IT-Ref(i)-18/29,Dated,Lahore,the, 1st. July 1929.

Sir,

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Reference to High Court,Lahore-Indian Income Tax, Act,XI-1922-Section 10(2)(vi)Proviso(b)-Depreciation-Excess over business-Profits-Set off against other income-Karam Ilahi Mohd. Shaffi-Delhi-Assessment 1926-27.

I have the honour to forward herewith a copy of the reference made to the High Court in the case noted above.

I have etc.,

Ramesh War Nath

for Commissioner of Income Tax,Pb.
N.W.F. & Delhi Provinces,Lahore;

forward 4/8/29

:-F.Ali:-

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BURMA.

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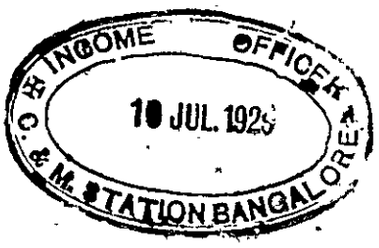

From

J.F. SHEEHY, ESQ., I.C.S.,

Commissioner of Income-tax, Burma,

Rangoon.

To

The Commissioner of Income-tax,

Bangalore.

6771
12/7/29
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Rangoon, the 28th June 1929.

Subject:- Income-tax Act, Indian - (XI of 1922) - Section 66 (3) - Reference to High Court - Application of S.P.K.A.A.M. Ch. Chettyar Firm in connection with the assessment for 1927-28.

Sir,

I have the honour to forward a copy of the order of the High Court, Rangoon, dated the 18th March 1929 in the above case and of the reference made in accordance with that order.

Forwarded to the Secretary to the Board of Commrs. of Income-tax for whom this is supplementary to mine of 9.2.29.

I have the honour to be,

Sir,

Your most obedient servant,

2/7/29

P.A.

for Commissioner of Income-tax, Burma

29.6.29

No. 6238
Inc 3

Office of the Resident in Mysore
and Commissioner of Income-tax,
Bangalore, 22nd July, 1929.

The marginally noted papers are forwarded to the Collector and Assistant Commissioner of Income-tax, Civil and Military Station, Bangalore; for information and favour of return.

Enc: 65 SN. 46
1
Sup O

Enc. 65 N. 47
1
P.

1. Reference made to the Lahore High Court by the Commissioner of Income-tax, Punjab, N.W.F. & Delhi in Income Tax Case No.64 of 1927.

2. (Order ~~Judgment~~) of the High Court of Judicature, Rangoon, in Civil Mis. Application No.135 of 1929, and of the ~~refer~~ reference made in accordance with that order.

for Secretary to the Resident &
Commissioner of Income-tax.

A Sitharamayya
18/7/29.

No. 9448/Ap.45
27.28

OF THE COMMISSIONER OF
INCOME-TAX, BURMA.
From
Recd. on 16
No.
Enclosures, Nil.

J. P. CLEGG, Esq., I.C.S.,
COMMISSIONER OF INCOME-TAX, BURMA.
RANGOON.

2B/7

To

The Commissioner of Income-tax,
Bangalore.

20/7/29
273

Rangoon, the 9th July 1929.

Subject:- Income-tax Act - Indian (XI of 1922) - Section 66 (5) - Reference to the High Court - Assessment of the S.T.V.T. Chettyar Firm of Laubin for the year 1926-27.

Sir,

I have the honour to forward a copy of the statement submitted to the High Court in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

9.7.29
for Commissioner of Income-tax, Burma.

9.7.29

50

From

A. Reisman, Esquire, I.C.S.,
Commissioner of Income Tax, Pb.
N.W.F. and Delhi Provinces, Lahore.

7062
20/7/29

To

The Commissioner of Income Tax,

Bangalore.

No. 14-(i), Dated, Lahore, the 12th July, 1929.

OFFICE OF THE COMMISSIONER OF
INCOME TAX IN MYSORE.
Recd. JUL 19 1929
No.
Enclosures, if any.

Sir,

Reference to High Court, Lahore-Indian Income Tax Act (XI-2)-Section 23(4) Appeal against assessment under-Residence in British India-Question regarding-Assistant Commissioner-Powers of-Bhagat Muni Chand of Haripur, District Hazara-

I have the honour to send herewith a copy of the High Court Judgment passed in the case noted above.

I have etc.,

Rameshwar Nath

for Commissioner of Income Tax, Pb:
N.W.F. & Delhi Provinces, Lahore.

Forward to the Officer etc in Station
5th 19-7

No. 6523
Rec'd

Office of the Resident in Lysore,
and Commissioner of Income-tax,
Bangalore, 30th July, 1929.

The marginally noted papers are forwarded to the Collector and Assistant Commissioner of Income-tax, Civil and Military Station, Bangalore, in continuation of this Residency endorsement No.6238, dated the 22nd July, 1929, for information and favour of return.

Rec. 6849 (Part I)

1. Reference made to the Burma High Court by the Commissioner of Income-tax, Burma, in connection with the assessment of the C.T.V.S. Chettyar Firm of Maubin for the year 1926-27

Rec. 6850 (Part II)

2. Judgment of the Lahore High Court in I.T.Appeal No.21 of 1928(Bhagat Duni Chand VS. The Commissioner of Income Tax, Punjab & N.W.F.Province.).

for Secretary to the Resident and
Commissioner of Income-tax.

S.N.48

(2)

A. Subbiah
25/7/29

F 2.

From

A.Raisman,Esquire,I. C. S.,
Commissioner of Income Tax,Punjab,
N.W.F. and Delhi Provinces.

To,

The Comaissioner of Income Tax,
Bangalore.

This seems to relate to the Assessment of S. N. Sundaram

No: R-14(i)/29, Dated,Lahore, the,10th August 29.

Sir,

Reference to High Court-Lahore-Export business-Profits of-Resident in British India-Liability to tax-Bhagat Jiwandas Gokalchand,Karamchand-Punjab-Hazara District Haripur-

I have the honour to send herewith a copy of the High Court judgment passed in the case noted above.

Rameshwar Nath
for Commissioner of Income Tax,Pb
N.W.F. and Delhi Provinces.

OFFICE
Diary No. 8166
Date of Receipt 22/8/29
Folio No. 273

[R.O.106(a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 27 - 8 - 1929.

No. 7335 Enclos. 1

Encl. to p.w.c.

~~A copy of~~ The marginally* noted paper ~~[illegible]~~ is forwarded to the Assistant Commissioner of Income-tax, C & M Station, Bangalore, for information and favour of reutrn.

*~~No.~~

Order of the High Court of Lahore in Reference Case No.18 of 1927

~~dated the~~

~~from the~~

For Secretary to the Resident.

1212—16-3-1929—5,000—RPB.

26.8.29

54

B U R M A.

No. 11467/Ap.313. 28-29

From

J. F. SHEEHY, ESQ., I.C.S.,

Commissioner of Income-tax, Burma,

New No.379, Dalhousie Street, Rangoon.

To

The Commissioner of Income-tax,

B A N G A L O R E.

8631
4/9/29
373
28

Dated Rangoon, the 28th August 1929.

Subject:- Income-tax Act, Indian (XI of 1922) - Section 66(2) - Reference to the High Court - Assessment of the A.M. Chettyar Concern of Moulmein.

Sir,

In continuation of my letter No. 5589/Ap.313, 5602 28-29 dated the 17th April 1929, I have the honour to forward a copy of the High Court's judgment in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

28/8/29

for Commissioner of Income-tax, Burma.

28.8.29

PSN/23-8.

[R. O. 106 (a)].

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 10-9-1927

No. 774 ENCLOS. 1

~~A copy of~~ The marginally* noted paper ~~letter, with enclosure,~~ is forwarded

*No. ~~dated~~

~~from the~~

Judgment of the High Court of Rangoon in Civil Reference No. 4 of 1929

to the Assistant Commissioner of Income tax, C & M Station, Bangalore, for information and favour of return.

In p.u.c

For *Secretary to the Resident.*

532—15-9-1927—5,000—RPB.

C V R
5.9.29

57.

No. 11698 /Ap:191
28-29.

From

J.F. [illegible], ESQ., I.C.S.,

Commissioner of Income-tax, Burma,

Rangoon.

To

The Commissioner of Income-tax,

Bangalore.

[illegible] OFFICE
Register No. 8889
Date of receipt 11/9/29
File No. 273
28

Rangoon, the 6th September 1929.

Subject:- Income-tax Act, Indian (XI of 1922) - Section 66 (2) - Reference to the High Court - Application of Burma Corporation Ltd. in connection with its 1928-29 assessment.

Sir,

In continuation of my letter No. 5599 5599/Ap:191, 5602 28-29 dated the 17th April 1929, I have the honour to forward a copy of the High Court's judgment in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

[illegible] 4/9/29
P.A.
for Commissioner of Income-tax, Burma.

6.9.29

[R. O. 106 (a)].

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 17-9-1929

No. 7917 ENCLOS. 1

~~A~~ copy of the marginally* noted paper ~~letter, with enclosure,~~ is forwarded

~~*No.~~ ~~dated~~

~~from the~~

Judgment of the ~~H~~ High Court of Rangoon in Civil Reference No. 5 of 1929

to the Assistant Commissioner of Income-tax, C & M Station, Bangalore, for information and favour of return.

For *Secretary to the Resident.*

532—15-9-1927—5,000—RPB.

CVR 12929

15

No./12258/Dp:283
27-28.

From

J.F. HEALY, M.A., I.C.S.,
Commissioner of Income-tax, Burma,
RANGOON.

To

The Commissioner of Income-tax,
Bangalore.

OFFICE OF THE COMMISSIONER OF INCOME TAX IN MYSORE.
Recd. 23-9-29
No.
Enclosures, if any.

DEPTT. OFFICE,
Register No. 9316
Date of Recd. 24/9/29.
File No. 273.

Rangoon, the 14th September 1929.

Subject: Indian Income-tax Act, 1922 (XI of 1922) Section 66 (3) - Reference to the High Court - Assessment of the P.L.P.M. Chettyar Concern, Nagessi, Toungoo District, for the 1927-28.

Sir,

I have the honour to forward a copy of the reference made to the High Court of Judicature at Rangoon in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

Denis Healy
14/9/29
for Commissioner of Income-tax, Burma.

Seems bracketed with the other Ct. M Statements - just mention in GB annual note!

Send

Ans 7/9. Non-res

Is addressed to Com: of I.T. There is no such person as Com: of I.T. We are receiving such Tax returns

The 1st assessment to the Income-tax

Why often and we not to have form for winding them to the other Ct. M Statements GB

No. 12047/App.45
27-28.

From

J.F. [illegible], M.A., I.C.S.,

Commissioner of Income-tax, Burma,

Rangoon.

To

The Commissioner of Income-tax,

Bangalore.

Rangoon, the 13th September 1929.

Subject:- Income-tax Act - Indian - Section 66 (3) - Reference to the High Court Assessment of U.T.V.N. Chettyar firm of Taubin for the year 1926-27.

Sir,

In continuation of my letter No. 9438/App.45, 9451 27-28 dated the 9th July 1929, I have the honour to forward a copy of the judgment in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

for Commissioner of Income-tax, Burma.

HKN 13/9.

[R.O.106(a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 27/9/ 1929

No. 8234 Enclos. 2

~~A copy of~~ The marginally* noted ~~letter, with enclosure, is~~ papers are forwarded to the Assistant Commissioner of Income-tax, C & M Station, Bangalore, for information and favour of return.

~~*No.~~

~~dated the~~

~~from the~~

(I) Reference to the High Court of Rangoon regarding assessment of the P.K.N.P.R.Chettiyar concern, SAGAGYI

(II) Judgement of the High Court of Rangoon in Civil Reference No. 9 of 1929.

For Secretary to the Resident.

27/9

1212—16-3-1929—5,000—RPB.

C.N.R 24/9/29

61

No. 16855 /Ap-50
28-29

From

J.C. MACKENZIE, ESQ., I.C.S.,
Commissioner of Income-tax, Burma.

To

The Commissioner of Income-tax,

BANGLORE.

Dated Rangoon, the 15 December 1929.

Subject:- Income-tax Act, Indian (XI of 1922) - Section 66(3) - Reference to High Court Application of S.P.K.A.A.M. Chettyar Firm, Rangoon, in connection with the 1927-28 assessment.

Sir,

In continuation of my letter No. 9232/Ap-50, 9245 28-29 dated the 28th June 1929, I have the honour to forward a copy of the High Court's Judgment in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

P.A.,
for Commissioner of Income-tax, Burma.

GP/11

[R.O.106(a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 25th December 1929.

No. 1203/ Enclos. Judgment.

A copy of the marginally* noted paper is forwarded to the Assistant Commissioner of Income-tax, C & M Station, Bangalore, for information and favour of return.

*No. Judgment of the High Court of Rangoon in Civil Reference No, 10 of 1929.

Secretary to the Resident.

1212—16-3-1929—5,000—RPB.

63

From

A. Ingram, Esquire, I. C.
Commissioner of Income Tax, Lahore,
N. W. F. and Delhi Provinces.

C.I.T. 15/1/30

Diary No. 525

Date of Receipt 15/1/30

Disp. No. 273 28

To

The Commissioner of Income Tax,
Bangalore.

No. I-14-(1)-21/29-30, Dated, Lahore, the 9th January 30.

Sir,

High Court, Lahore-Reference to-Ingram Income Tax Act(XI of 1922) - S. 66(1) - Property- Annual Value of-Honey tax payable by owner- Another deductible from-Messrs. Chunnamal Salig Ram of Delhi.

I have the honour to forward herewith a copy of a reference made by me to the High Court in the case noted above.

I have etc.,

Rameshwar Nath

for Commissioner of Income Tax, Lahore,
N.W.F. and Delhi Provinces.

[R.O.106(a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 28/1/1930

No. 820 Enclos. 1
273-28

~~The~~ the marginally* noted paper, ~~with enclosure,~~ is forwarded

~~*No.~~

~~dated the~~

~~from the~~

to the Assistant Commr. of Income-tax, C & M Station, Bangalore, for information and favour of return.

Copy of reference made by the Commr. of Income-tax, Punjab, to the High Court, Lahore, regarding assessment of Messrs. Chunnamal Saligram of Delhi.

1212—16-3-1929—5,000—RPB.

Secretary to the Resident.

D U P L I C A T E.

No. 459 (28-29) 23-29

From

J.T. [illegible], M.A., I.C.S.,

Commissioner of Income-tax, Burma.

To

The Commissioner of Income-tax,

Bangalore.

Dated Rangoon, the 24th January 1930.

Subject:- Income-tax Act, Indian, (XI of 1922) - Section 66(2) - Reference to the High Court - Assessment of the M.K.C.T. Chettyar firm, Rangoon, for the year 1928-29.

Sir,

I have the honour to forward a copy of the statement in the above case which has been sent to the High Court of Judicature at Rangoon.

I have the honour to be,

Sir,

Your most obedient servant,

for Commissioner of Income-tax,

13.1.30.

Ver/11

[R.O.106(a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 1/2/ 1930

No. 1000 Enclos. 1

A copy of the marginally* noted paper is forwarded to the Assistant Commissioner of Income-tax, C & M Station, Bangalore, for information and favour of return

~~*No.~~

~~dated the~~

~~from the~~

Statement in the case referred to the High Court at Rangoon regarding assessment of the K.K.C.T. Chettiyar Firm, Rangoon

29/1

for Secretary to the Resident.

1212—16-3-1929—5,000—RPB.

67

B U R M A.

No. 1071/1024 Ap-283/27-28

1645
12/2/30
273/296

From

J.C. MACKENZIE, ESQ., I.C.S.

Commissioner of Income-tax, Burma.

To

The Commissioner of Income-tax,

Bangalore

Forwarded to Bangalore C & M Station for R. R 11-2-30

Dated Rangoon, the 4th February 1930.

Subject:- Reference to the High Court - Income-tax Act XI of 1922 - Section 66(3) - P.K.N.P.R. Chettyar Concern - My letter No. 12248/Ap-283, 12261 27-28, dated the 14th September 1929.

Sir,

I enclose a copy of the High Court's judgment in the above case.

I have the honour to be,

Sir,

Your most obedient servant,

P.A.,
for Commissioner of Income-tax, Burma

VGP/3

[R.O.106(a).]

68

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 28/2/1932.

No. 1882 Enclos. 1
273-28

A copy of the marginally* noted paper is forwarded to the Assistant Commr. of Income-tax, C & M Station, Bangalore, for information and favour of return.

*No.

~~dated the~~

~~from the~~

Judgment in Civil Reference No.11 Of 1929 in the Rangoon High Court

28/2/32
for Secretary to the Resident.

1212—16-3-1929—5,000—RPB.

C.N.O.
25-2-30